

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF NEW MEXICO  
3       UNITED STATES OF AMERICA,  
4                   Plaintiff,  
5               vs.                   NO:   CR-15-4268 JB  
6       ANGEL DELEON, et al.,  
7                   Defendants.

8  
9               Transcript of Motions Hearing before The  
10      Honorable James O. Browning, United States District  
11      Judge, Las Cruces, Dona Ana County, New Mexico,  
12      commencing on March 16, 2018.

13      For the Plaintiff:   Ms. Maria Armijo, Mr. Matthew  
14      Beck

15      For the Trial 2 Defendants:   Mr. Brock Benjamin;  
16      Ms. Cori Harbour-Valdez; Mr. Patrick Burke; Mr. Jim  
17      Castle; Mr. Robert Cooper; Mr. James Lahann; Mr. Joe  
18      Shattuck; Mr. John Granberg; Mr. Edwardo Solis;  
19      Mr. Billy Blackburn; Mr. Donovan Roberts; Ms. Lisa  
20      Torraco; Ms. Angela Arellanes.

21      For the witness:   Ms. Cody Rogers  
22  
23  
24  
25

1 THE COURT: All right. Good morning  
2 everyone. I think we've got an attorney for each  
3 defendant. I think we have all the defendants in the  
4 courtroom now. So we'll get started.

5 All right. Is Mr. Garcia back today?

6 MS. ROGERS: He is, Your Honor. I'll go  
7 get him.

8 THE COURT: All right. Mr. Garcia, if  
9 you'll return to the witness box. And I'll remind  
10 you that you're still under oath. All right,  
11 Mr. Garcia.

12 Mr. Beck, if you wish to continue your  
13 cross-examination of Mr. Garcia.

14 MR. BECK: I do, Your Honor. Thank you.

15 THE COURT: Mr. Beck.

16 MR. BECK: Ms. Bevel, I think we're on  
17 Government's Exhibit 1 for this hearing?

18 THE CLERK: For this, yes, the  
19 Government -- I just have one. That's it so far.

20 MR. BECK: Your Honor, I'm going to move to  
21 admit as Government's Exhibit 1, the FBI 302  
22 interview of James Garcia on May 13, 2017.

23 THE COURT: Any objection to that?

24 MR. CASTLE: Yes. I don't think there has  
25 been an adequate foundation to establish that it's an

1 accurate report.

2 THE COURT: Well, this is a 104 hearing --  
3 that's what the defendants have characterized it --  
4 so I'll need all the information I can get. I'm not  
5 sure I'm the one that determines whether it's  
6 accurate. I'll have to determine whether, I guess,  
7 Mr. Garcia's statements can come in. But I'd admit  
8 Government's Exhibit -- is it 2 now -- 2 into  
9 evidence.

10 MR. BECK: Two, yes, Your Honor.

11 THE COURT: What's the size of that report?  
12 How long did you say it was yesterday?

13 MR. BECK: This report, the way it's been  
14 filed, it's Document 1909-1, so it was attached to  
15 Mr. Castle's targeted response, and it is five pages.

16 JAMES GARCIA,  
17 after having been previously duly sworn under  
18 oath, was questioned, and continued testifying  
19 as follows:

20 CONTINUED CROSS-EXAMINATION

21 BY MR. BECK:

22 Q. So Mr. Garcia, I think it was late in the  
23 day yesterday, we were both tired. And I just want  
24 to make sure that I understand your testimony.

25 With Mr. Burke yesterday, my understanding

1 was that you said Mr. Troup had never admitted any  
2 crimes to you. Was that your testimony yesterday?

3 A. I don't remember.

4 Q. So now, your testimony -- and that's what I  
5 wasn't clear on -- so your testimony is that you  
6 don't remember, sitting here today?

7 A. I don't remember, and I plead the Fifth.

8 Q. All right. So now -- so this is what I'm  
9 trying to get us certain on. So did Edward Troup,  
10 Mr. Troup, admit his involvement in SNM crimes to  
11 you?

12 A. No.

13 Q. So you're sure that he did not?

14 A. No.

15 Q. And on May 13 of 2013, you were interviewed  
16 by FBI Special Agent Lance Roundy, right?

17 A. I was -- there are so many FBI agents, I  
18 don't remember each of those names.

19 Q. You were arrested on a federal indictment  
20 around May 9th of 2013, right?

21 A. Yes.

22 Q. And during that arrest, when you were  
23 arrested, you were arrested in Albuquerque, and you  
24 were transported down to Las Cruces, right?

25 A. Yes.

1 Q. And that was with agent -- FBI Special  
2 Agent Lance Roundy and --

3 A. I don't know his name. I don't remember.

4 Q. But you do remember that when you were  
5 arrested, you were transported from Albuquerque to  
6 Las Cruces with two FBI agents, right?

7 A. One FBI agent.

8 Q. One FBI agent. Okay.

9 And in that car ride you talked with the  
10 FBI agent and answered his questions, didn't you?

11 A. No.

12 Q. And on May 9th, 2013 -- and maybe this is  
13 at the federal courthouse -- you did interview with  
14 an FBI agent, right?

15 A. I plead the Fifth.

16 Q. So you're pleading the Fifth in response to  
17 my question as to whether on May 9th of 2013, you  
18 interviewed with an FBI agent?

19 A. I said I plead the Fifth.

20 MR. BECK: And, Your Honor, I don't have it  
21 with me, but I will supplement Government's Exhibit  
22 2 -- hopefully before the end of the day, but perhaps  
23 not -- with Government's Exhibit 2A, which will be a  
24 recording of the conversation that took place on May  
25 9th, 2013, with Mr. Garcia and FBI Special Agent

1 Lance Roundy.

2 THE COURT: Any objection?

3 MR. BURKE: Yes. Just in the interests of  
4 fairness. I believe this is the first time anybody  
5 knew about a recording. And I don't think this sort  
6 of sandbagging is appropriate. Basically, it's a  
7 discovery game. And the Government should not be  
8 permitted to benefit by failing to provide a tape  
9 recording, when it should have been provided years  
10 ago.

11 And, in fact, yesterday, I believe it was  
12 Mr. Beck who said that "We have provided all  
13 recordings." And that came up in the context of my  
14 complaining about Ben Clark's recording not being  
15 provided. So, in effect, if they have a recording  
16 that they are now going to produce, that would mean  
17 that Mr. Beck's statement yesterday that they have  
18 produced all recordings is not a true statement. And  
19 I object in the interests of fairness.

20 THE COURT: All right.

21 MR. CASTLE: Your Honor, I have an  
22 additional objection. Rule 16 specifically indicates  
23 if they have recorded statements -- well, I  
24 apologize, that's a defendant's statement. But, Your  
25 Honor, I join Mr. Burke's objection. There is no

1 tape that's been produced to the defense -- I  
2 confirmed it with our paralegals. All the lawyers  
3 were shaking their heads as soon as we heard there  
4 was tape recording.

5 This witness hasn't been able to listen to  
6 that tape recording, and would have been provided  
7 with a copy of it in preparation for his testimony.  
8 None of that has happened. And we need to find out,  
9 I guess, why that hasn't happened.

10 MR. BECK: I don't disagree with that.

11 Last night, when I heard Mr. Garcia's  
12 testimony, what I did was I called Special Agent  
13 Lance Roundy. He wasn't sure it was recorded. He  
14 thought he'd recorded some. And I told him to go  
15 back, check his files, dig to the bottom of it and  
16 see if there was a recording for this.

17 This morning he called Ms. Armijo, I think  
18 probably right around 8:00 a.m., told her he had  
19 found a recording and that this conversation was  
20 recorded. So I've asked him to produce that to us as  
21 soon as possible.

22 THE COURT: Let me do this: Let me admit  
23 2A for purposes of this hearing. If there are other  
24 problems with it being admissible, then I can sort  
25 that out. And if there is some either misconduct or

1 something I have to deal with, I can deal with that.  
2 But for purposes of this hearing, of getting this  
3 hearing so I can figure out whether this material is  
4 going to be admissible, I'll admit 2A. And then  
5 we'll figure out what to do with any late production  
6 at the appropriate time.

7 Mr. Beck.

8 Q. Mr. Garcia, I'm showing you what's been  
9 admitted as Government's Exhibit 2 now. This is the  
10 FBI report that I went over with you a little bit  
11 yesterday. And on page 5 of Government's Exhibit 2,  
12 you'll see that at the bottom there it was drafted by  
13 Lance Roundy, FBI Special Agent. I'm going to go  
14 ahead and use my copy, my highlighted copy.

15 You are -- or at least in 2013, you were a  
16 validated member of the Sindicato de Nuevo Mexico  
17 Prison Gang, right?

18 MR. BURKE: Objection --

19 A. No.

20 MR. BURKE: -- asked and answered. We went  
21 over this yesterday.

22 A. No.

23 MR. BURKE: It shouldn't be pretended that  
24 this is the first time he's seen the statement. Mr.  
25 Beck took the statement and showed it to Mr. Garcia



1 yesterday several times. Objection.

2 THE COURT: Overruled.

3 Q. And so it sounds like you said "No"?

4 A. That what? That I was a what, a member of  
5 what?

6 Q. That you were a validated member of the  
7 Sindicato de Nuevo Mexico.

8 A. No, I'm not a member of Sindicato de Nuevo  
9 Mexico.

10 Q. And again, I know it was late last night.  
11 I know you were newly appointed counsel. But you  
12 have spoken with your attorney about testifying under  
13 oath, right?

14 A. Yes.

15 MR. CASTLE: Your Honor, I'd ask that  
16 question be stricken. Asking a person on the stand  
17 what they talked to their lawyer about is improper.  
18 It violates attorney-client privilege. And it's  
19 actually threatening.

20 THE COURT: Well --

21 MR. BURKE: Join the objection, Your Honor.

22 THE COURT: Overruled. I think taking the  
23 oath is the first portion of competency. So the  
24 witness needs to be aware of the severity of the  
25 situation, that he's under oath.

1 Q. Now, again, this report, at page 2 of 5  
2 here, at the bottom it starts out, "In November 2012,  
3 you had a conversation with SNM Gang member Edward  
4 Troup in the backyard off of" -- somewhere in  
5 Albuquerque. Did you have that conversation with Mr.  
6 Troup in 2012?

7 A. I don't remember.

8 Q. Okay. Was Mr. Troup in prison or on the  
9 streets in 2012?

10 A. Like I said before, me and him don't get  
11 along. I don't remember.

12 Q. So you and Mr. Troup don't -- I'd forgotten  
13 that -- you and Mr. Troup don't get along?

14 A. No.

15 Q. Okay. And again, we went over this  
16 yesterday, where it says -- and I just wanted to  
17 refresh your memory, because if you don't remember,  
18 it says that, "Troup stated that during one of the  
19 murders he held Fred Dawg's legs while Wino strangled  
20 him to death with a drawstring from a laundry bag."

21 A. I don't remember saying that.

22 Q. "Both Troup and Alonso disposed of the  
23 drawstring and then took off their clothes and tore  
24 up the evidence in an attempt to hide their part in  
25 the murder," right?

1           A.     Like I said, I don't remember saying any of  
2     that.

3           Q.     Okay. But it's your testimony -- you said  
4     this morning that Mr. Troup had never admitted to you  
5     participation in a murder, right?

6           A.     Right.

7           MR. BECK: Your Honor, the United States --

8           Q.     Well -- and remind me, but yesterday you  
9     said that you didn't even know who Wino is, right?

10          A.     Who?

11          Q.     Wino.

12          A.     No.

13          Q.     Right.

14          MR. BECK: Your Honor, the United States  
15     moves to admit as Government's Exhibit 3 in this the  
16     plea agreement of Javier Alonso, a/k/a Wino.

17          THE COURT: Any objection?

18          MR. BURKE: What's the purpose of this  
19     exhibit? May I inquire?

20          MR. BECK: Sure. The purpose of this  
21     exhibit is -- it's relevance to the accuracy of that  
22     statement that he claims Mr. Troup did not give him.

23          MR. BURKE: You're going to impeach --  
24     excuse me, Your Honor, I think it's improper to  
25     impeach Mr. Garcia with a statement drafted by the

1 Government for Mr. Alonso.

2 THE COURT: Well, I'm not sure he's going  
3 to impeach. He may try to, but I'm not sure he's  
4 going to impeach. But it sounds like that plea  
5 agreement would be somewhat relevant to me  
6 understanding what Wino's role in this is. So I'll  
7 admit Government's Exhibit 3.

8 Q. Mr. Garcia, I'm now showing you what's been  
9 admitted as Government's Exhibit 3 here. Have you  
10 seen a federal plea agreement before in a federal  
11 case?

12 A. No.

13 Q. You've never seen a federal plea agreement  
14 before?

15 A. Well, I plea bargained. But I never seen  
16 one like that.

17 Q. Fair enough. Do you see up there where it  
18 says, "Javier Alonso, a/k/a Wino"?

19 A. Yes.

20 Q. And do you know that Criminal No.  
21 15-CR-4268 JB is the case number for the case that  
22 you're testifying in today?

23 A. I don't understand.

24 Q. Sure. My question to you was do you know  
25 that Criminal No. 15-CR-4268 JB is the criminal case

1 number for the case that you're testifying in right  
2 now?

3 A. I still don't understand.

4 Q. Okay. Fair enough.

5 MR. CASTLE: Your Honor, I'll pose a  
6 different objection. I believe this actually  
7 violates the concept of sequestration, which says  
8 that you don't let one witness know what another  
9 witness' testimony is going to be. What this is is  
10 the testimony of Mr. Alonso but just in written form.  
11 So it's essentially a violation of sequestration. We  
12 invoked the rule early on in these proceedings, and  
13 it was granted. So I think what they're doing here  
14 is essentially using -- indirectly violating that.

15 THE COURT: Well, we're a long ways from  
16 the trial. And I don't know if Wino is going to  
17 testify in this hearing, so it's a little bit complex  
18 to try to sort out and allow people to ask people  
19 about other people's testimony to try to determine  
20 whether this evidence is admissible. Overruled.

21 Q. I'm directing your attention to page 5 of  
22 Government's Exhibit 3 here. Do you see this  
23 paragraph that I pointed to here that begins, "In  
24 2007, I was an active member of the SNM," do you see  
25 that paragraph?

1 A. Yeah.

2 Q. Do you see where it says that, "I aided and  
3 abetted Edward Troup, a/k/a Huero Troup" -- and I'm  
4 going to skip to -- "others in the murder of the  
5 person"-- and I'm down here for you -- "in the murder  
6 of the person identified in the second superseding  
7 indictment as FS, who was an inmate at the Southern  
8 New Mexico Correctional Facility in Dona Ana County."  
9 Do you see that sentence?

10 A. Um-hum.

11 Q. Do you know that that refers to Freddie  
12 Sanchez, or who I think you referred to as Fred Dawg  
13 Sanchez?

14 A. I don't know --

15 MR. BURKE: Your Honor, I'm going to  
16 object.

17 A. I don't know him.

18 MR. BURKE: He's impeaching Mr. Garcia with  
19 a statement that they crafted.

20 THE COURT: I don't see the impeachment,  
21 Mr. Burke. Overruled.

22 Q. So do you know if that corresponds with  
23 what at least this report says that Mr. Troup told  
24 you about a strangling to death in the Southern New  
25 Mexico Correctional Facility in Las Cruces?

1           A.     You hear all kinds of rumors. There were  
2     so many rumors back then. I don't --

3           Q.     Okay. We'll come back to that. Do you  
4     see -- I'm going to skip a paragraph -- or excuse  
5     me -- a sentence, and start with the sentence that  
6     says, "On June 17, 2007."

7           A.     Okay.

8           Q.     See where it says, "SNM member Troup and I  
9     killed FS in his cell"?

10          A.     Yes.

11          Q.     Do you see that? And does that correspond  
12     with what this report says that Mr. Troup told you  
13     that he held Fred Dawg's legs while Wino strangled  
14     him to death with the drawstring from a laundry bag"?

15          A.     No.

16          Q.     Okay. That doesn't correspond?

17          A.     I don't see the --

18          Q.     Okay. Fair enough.

19                 MR. BECK: And Your Honor, I'm going to  
20     move to admit as Government's Exhibit 4, an FBI 302  
21     report dated 9/7/2017, which was an FBI debrief of  
22     Javier Alonso, a/k/a Wino, on August 28, 2017.

23                 THE COURT: Any objection?

24                 MR. BURKE: Same objection, Your Honor.

25                 THE COURT: All right. Government's

1 Exhibit 4 will be admitted into evidence.

2 Q. All right. Mr. Garcia, I'm now showing you  
3 what's been admitted as Government's Exhibit 4. Do  
4 you see at the top of that document it says, "On  
5 August 2, 2017 and August 28, 2017 Javier Alonso,  
6 a/k/a Wino, participated in debriefing sessions"?

7 A. Yes.

8 Q. And I'm going to take you first to page 5  
9 of this document. And right under where it says,  
10 "Fred Sanchez homicide," I'll read that aloud for you  
11 so you can follow along, "Alonso was incarcerated at  
12 the Southern New Mexico Correctional Facility, SNMCF,  
13 blue pod when Kyle Dwyer arrived with paperwork on  
14 Sanchez. The paperwork was passed around and Alonso  
15 read it." Do you see that?

16 A. Yes.

17 Q. Did you see that paragraph? At least the  
18 first part of that, did you follow along with that?

19 A. Like I said, I'm illiterate so --

20 Q. That's fine.

21 A. -- you gotta come and check -- I don't know  
22 what you mean.

23 Q. That's fine.

24 A. I can't read.

25 Q. So I'm taking you back now to Government's



1 Exhibit 2, which is your FBI interview on May 9 of  
2 2013. And it says that, "At this 2012 barbecue Troup  
3 also mentioned that the murder of Fred Dawg was an  
4 order from headquarters to which you interpreted the  
5 term 'headquarters' to mean the main New Mexico  
6 prison facility in Santa Fe, New Mexico, where the  
7 majority of the SNM leadership was incarcerated." Do  
8 you see that?

9 A. Yes.

10 Q. And so does that correspond with paperwork  
11 being brought down to the Southern New Mexico  
12 Correctional Facility by Kyle Dwyer?

13 A. I don't --

14 MR. BURKE: Your Honor, I'm going to  
15 object --

16 A. -- know, sir.

17 MR. BURKE: It's improper to ask this  
18 witness whether two different pieces of paper --

19 A. Yeah, I don't know what you're talking  
20 about.

21 THE COURT: Hold on. While the attorney is  
22 making an objection, you --

23 A. Sorry about that.

24 THE COURT: -- be quiet until I hear the  
25 objection.

1 MR. BURKE: Your Honor, I think it's  
2 improper to ask this witness whether two different  
3 pieces of paper correspond with each other. Your  
4 Honor can make that decision.

5 THE COURT: Well, he can also answer the  
6 question. Overruled, Mr. Burke.

7 Q. Do you remember my question?

8 A. Something about orders from headquarters  
9 and the paperwork. I don't know. I don't know.

10 Q. Sure. I'll ask you again. So does this  
11 sentence in your debrief, or your interview in 2013,  
12 that Troup also mentioned that the murder of Fred  
13 Dawg was an order from headquarters to which you  
14 interpreted the term "headquarters" to mean the main  
15 New Mexico prison facility in Santa Fe, New Mexico,  
16 where the majority of the SNM leadership was  
17 incarcerated, my question to you is: Does that  
18 sentence correspond with the sentence that "Kyle  
19 Dwyer brought down the paperwork to the Southern New  
20 Mexico Correctional Facility"?

21 A. No.

22 Q. In your opinion it doesn't?

23 A. In my opinion, no.

24 Q. Okay. And then the last sentence in this  
25 paragraph where it says Troup told you that Fred Dawg

1 provided information on a murder, which was against  
2 the SNM bylaws, and that that was the cause for his  
3 murder. Do you see that sentence in your interview?  
4 It's this last highlighted sentence at the bottom.

5 A. I see it. No, I don't remember.

6 Q. And then I'm going to take you back to  
7 Government's Exhibit 4. And this is the same  
8 paragraph I was just reading about Mr. Alonso's  
9 debrief where it says, "The paperwork consisted of  
10 four to five pages from a police report or court  
11 document, and only a few sentences pertained to  
12 Sanchez. Alonso believed that Sanchez had snitched  
13 on a female from Roswell and thought the paperwork  
14 was pretty weak." Does that correspond with Fred  
15 Dawg providing information which is against the SNM  
16 bylaws?

17 A. I don't know. I'm not an SNM member. I  
18 don't know what you're talking about.

19 Q. Okay. And so my question to you is: Does  
20 that correspond with Fred Dawg providing information  
21 on a murder which was against the SNM bylaws, and  
22 that was the cause for his murder?

23 A. I'm sorry, you lost me. Who is Fred Dawg?  
24 You're losing me on all these --

25 Q. I'm asking -- I'm asking, here in your

1 report -- I'm not asking who is Fred Dawg.

2 A. Okay, sorry.

3 Q. I'm asking, in your report from April 13,  
4 it says that you told Special Agent Lance Roundy that  
5 Troup told you that Fred Dawg provided information on  
6 a murder which was against the SNM bylaws, and that  
7 was the cause for his murder.

8 MR. BENJAMIN: Judge, objection.

9 MR. CASTLE: Objection.

10 THE COURT: Overruled.

11 (Unintelligible cross-talk by attorneys.)

12 THE COURT: You're going to get a chance to  
13 do your redirect. You asked for this hearing to  
14 explain this piece of evidence that I guess you're  
15 either wanting to get in, or not get in. You spend  
16 all of your time objecting to things that you know  
17 are admissible in a 104 hearing. So let me hear it  
18 and figure out whether this is going to be admissible  
19 or not admissible.

20 Q. So my question to you was: Does that  
21 telling on a murder, which says that it was the  
22 reason for Mr. Sanchez' murder, correspond with  
23 paperwork consisting of four to five pages from a  
24 police report or court document, with a few sentences  
25 pertaining to Sanchez, which Alonso believes Sanchez

1 had snitched on a female from Roswell?

2 A. I don't remember. I don't remember none of  
3 that.

4 Q. Now, in this 302 report, your interview in  
5 2013, I read this last sentence that's highlighted at  
6 the top to you, where it says, "Both Troup and Alonso  
7 disposed of the drawstring and then took off their  
8 clothes and tore up the evidence in an attempt to  
9 hide their part in the murder." Do you see that  
10 sentence there?

11 A. Yes.

12 Q. Okay. Now, I'm going to direct your  
13 attention again to Government's Exhibit 4, which is  
14 Mr. Javier Alonso, a/k/a Wino's, debrief, at page 6.  
15 And I'm going to direct your attention -- well, I  
16 guess we can start a little bit further up here. And  
17 says that, "Alonso entered Sanchez' cell and looked  
18 out the window. Sanchez turned around. Alonso  
19 pulled the cord out and placed it over Sanchez' head.  
20 Troup held Sanchez around the torso while Alonso  
21 strangled him. Alonso cut his shin during the  
22 attack."

23 Now, I'm going to skip down here to the  
24 paragraph where it says, "Alonso slammed Sanchez on  
25 the ground and 'busted his face.' Alonso and Troup

1 checked Sanchez to ensure he was dead by looking for  
2 signs of breathing and placing a mirror underneath  
3 Sanchez' nose. Alonso thought Sanchez defecated on  
4 himself. Troup kissed Alonso on the cheek and told  
5 him he was proud of him."

6 The next paragraph says, "Alonso flushed  
7 the cord down Sanchez' toilet, and he and Troup  
8 placed Sanchez on his bunk." Does that last sentence  
9 about Alonso flushed the cord down Sanchez' toilet,  
10 and he and Troup placed Sanchez in his bunk  
11 correspond with this sentence in your interview that  
12 says, "Troup and Alonso disposed of the drawstring  
13 and took off their clothes and tore up the evidence  
14 in an attempt to hide their part in the murder"?

15 A. It seems different.

16 Q. All right. I want to talk about the next  
17 paragraph here in this report. It says that you  
18 stated that "Troup told you about Sanchez' murder in  
19 approximately 2008, when you violated your  
20 probation/parole and were incarcerated in the New  
21 Mexico prison system." Do you see that sentence  
22 there?

23 A. Yes.

24 Q. Do you remember us talking about this  
25 yesterday?

1 A. Yes, you were.

2 Q. And I think it was your testimony that you  
3 and Mr. Troup had never been incarcerated together  
4 after 2008, right?

5 A. Not that I remember.

6 Q. Okay. Well, I think yesterday you said it  
7 was impossible because you'd never been incarcerated  
8 together. Do you remember that?

9 A. I was always at the North, incarcerated,  
10 you know what I mean? But at the North you're in the  
11 same prison, different cells, locked down 24 hours a  
12 day.

13 Q. Sure.

14 A. So you've got to make yourself -- let me  
15 know what you mean by that.

16 Q. Let me ask this question: In the North,  
17 when you're incarcerated, you still go out to the  
18 prison yard, right?

19 A. Yes.

20 Q. Fair enough. At any time after 2008, after  
21 you violated parole, were you and Edward Troup  
22 incarcerated together at the North?

23 A. I was at the North, but I don't know if he  
24 was there.

25 Q. Okay. And so yesterday -- and so are you

1 saying that -- I think yesterday you said this  
2 couldn't have happened. Are you now saying that Mr.  
3 Troup could have told you about this if you both were  
4 incarcerated at the same time?

5 A. Like I said before, he never told me  
6 nothing. We do not like each other. I told you that  
7 like about six times, sir, right? So --

8 Q. Sure. So my question to you is: If you  
9 were incarcerated together after 2008, did you have  
10 this conversation with Mr. Troup?

11 A. No, I didn't have no conversation with him.

12 Q. After 2008, if you violated your probation  
13 and parole, were you incarcerated with Mr. Troup at  
14 the North?

15 A. No. I just answered that question.

16 Q. I'm asking you again.

17 A. No. I was at the North. It was a long  
18 time ago. I don't remember.

19 Q. Okay. Fair enough. Would it help refresh  
20 your memory if I showed you yours and Mr. Troup's  
21 Offender Physical Location Histories?

22 A. I don't need to see it because I don't  
23 remember.

24 Q. All right. Fair enough.

25 MR. BECK: At this time the United States



1 moves to admit Government's Exhibits 5 and 6.  
2 Exhibit 5 will be Edward Troup's Offender Physical  
3 Location History, and 6 will be Mr. Garcia's Offender  
4 Physical Location History.

5 THE COURT: Any objection?

6 MR. CASTLE: I need to take a look at it  
7 first.

8 MR. BURKE: Your Honor, may we approach?

9 THE COURT: Yeah, come on up.

10 (The following proceedings were held at the  
11 bench.)

12 MR. BURKE: Your Honor, I asked to approach  
13 as an officer of the Court. The first time I ever  
14 laid eyes on Daffy Garcia was yesterday. I've never  
15 spoken to him, and I don't think most of the rest of  
16 us have.

17 THE COURT: Who is that?

18 MR. BURKE: The witness. I'm sorry, his  
19 nickname is Daffy. Just as an officer of the Court,  
20 what's going on here is just to set up the perjury.  
21 And I find it offensive. And I know you appointed  
22 him a lawyer, but the lawyer is not protecting him.

23 And he needs to listen to the tape that  
24 Lance Roundy apparently has, and take a deep breath  
25 and be more prepared for Mr. Beck's very aggressive

1 cross-examination, which I believe is either a setup  
2 for perjury or something along those lines. And it  
3 is a very aggressive prosecution team. If Your Honor  
4 is saying that this is appropriate, I certainly  
5 understand and will obey the Court's order. But I'm  
6 very concerned about Daffy Garcia. And I really  
7 believe that what's happening here could be an  
8 injustice to him, simply because he didn't do what  
9 the Government wanted.

10 THE COURT: Well, let's go back to the  
11 beginning of this. Tell me why I'm listening to  
12 Mr. Garcia at the beginning? Why are you offering --  
13 you subpoenaed him. You fought hard. We got an  
14 attorney over y'all's objections. Y'all did not want  
15 him to have an attorney. So this is striking me a  
16 little bit interesting that the defense is now saying  
17 let's suspend the hearing so he can get either a  
18 better attorney or a more prepared attorney.

19 Hold on. What are we doing with this guy?  
20 I now have gotten to the point where I don't remember  
21 why you're trying to call this guy.

22 MR. CASTLE: Your Honor, I represent Billy  
23 Garcia, and the reports indicated that Mr. Garcia --  
24 this Mr. Garcia, James Garcia -- had made a statement  
25 to law enforcement back in 2008, in which he said

1     that Mr. Troup made a confession to him at a  
2     barbecue, and in that confession he implicated my  
3     client.

4             THE COURT: Is this the same statement that  
5     Mr. Beck is going over, Mr. Garcia's statement?

6             MR. CASTLE: No -- well, there is two  
7     statements that Mr. Beck is going through. One is  
8     concerning the 2001 murders. But then the majority  
9     of his exam deals with a separate homicide of Mr.  
10    Sanchez that happened in 2007, which is Count 3. But  
11    I had no dog in that hunt, and I --

12            THE COURT: This is Government's Exhibit 1  
13    here that we're talking about, that's the interview.

14            MR. CASTLE: Yes, allegedly Mr. Garcia  
15    made -- Mr. Troup made statements to Mr. James Garcia  
16    about the homicides during that barbecue. And I was  
17    only asking about the one that involves my client,  
18    because that's all I have standing to do. What I was  
19    attempting to -- frankly, what I was wanting --  
20    really wanting to apply to James Garcia, what were  
21    the circumstances behind Mr. Troup saying that Billy  
22    Garcia is behind the murders, whether that was a  
23    bragging circumstances, those kinds of things. When  
24    Mr. Garcia took the bench -- or took the witness  
25    stand and said he never made that, my questions went

1 from 13 to, like, 6.

2 THE COURT: Here's my concern: Here's my  
3 concern that you asked for a 104, and I still -- now  
4 am trying to remember why, what the evidentiary issue  
5 was that I allowed it to come -- but here's the  
6 problem: Once he did that, once he said that, then  
7 what you're going to do is say that guy can't take  
8 the stand because then Mr. Beck can't impeach him at  
9 trial, because that would just be statements that  
10 he's going to testify to. And, you know, you sealed  
11 off this witness, which calls into question whether I  
12 should have allowed a 104 in the first place, which  
13 was the Government's position.

14 So now we're in this position of you asking  
15 three questions and sealing him off, so the  
16 Government is in the position that they've got five  
17 pages of his statement and a recording to impeach him  
18 with. They've got to get this guy into some sort of  
19 shape so that you're not at trial saying, Judge, they  
20 can't put him on the stand because all they're going  
21 to do is impeach their own witness. And all we're  
22 going to hear is Mr. Beck testifying. So it's a very  
23 difficult problem.

24 So remind me again of the evidentiary rule  
25 that you wanted to call this witness for.

1 MR. CASTLE: I requested a 104 hearing on  
2 whether they could establish that the statement  
3 implicating my client was actually a statement  
4 against Mr. Troup's interests, against his penal  
5 interests at the time that he made it. That was  
6 where I was going.

7 Obviously, this has expanded to something  
8 completely different. But that was where I was  
9 going. But when the witness said he never made that  
10 statement --

11 THE COURT: You're good lawyers, you know  
12 what you're going to do with this. You ask three  
13 questions, seal him off, and the Government -- I  
14 think I probably ought not to have any more 104  
15 hearings. We'll get in this situation.

16 MR. CASTLE: I understand. My objections,  
17 which the Court overruled, and after the Court  
18 admonished us, there haven't been any further  
19 objections. My objections were all based upon rules  
20 of evidence. The last one was the Government had  
21 indicated to Mr. Garcia that it was his report, but  
22 it's obviously not his report. It's Agent Roundy's  
23 report. That was my objection. I probably won't  
24 object too much. I'm not objecting to the process  
25 taking place that the Government is doing.

1 THE COURT: Look, we are where we are. I  
2 think you've established enough. This guy has got  
3 serious problems. I think you've established that.  
4 I agree with Mr. Burke. I don't want to dig his  
5 grave any deeper than where he is now. He's got  
6 serious problems. I don't know what we're going to  
7 do with him at trial, but I don't think I need to see  
8 a guy dying any more this morning. I think you've  
9 established your point.

10 MR. BECK: Your Honor, there are a few more  
11 things that will tie up his testimony, but they're  
12 just documents that I can put in. I don't need to go  
13 over them with him. I'll seek to admit those, then  
14 I'll finish my questioning.

15 MR. BURKE: Your Honor, may I respond to  
16 one thing. If it's a confession, You're right, I did  
17 it, was part of the group. He says he didn't need a  
18 lawyer. I really thought it would be ten questions,  
19 and boom.

20 I've watched Mr. Beck and Ms. Armijo enough  
21 to know they would be aggressive. I just thought we  
22 would be in and out of here. I made a mistake. He  
23 should have had a lawyer from the beginning, and I --

24 THE COURT: I don't know who is surprised  
25 by what he did. Once he did it, you know, then you

1 know, I could see what you two are going to do with  
2 that, and seal him off and say: You can't put the  
3 guy on the stand. You're sitting here with a stack  
4 of evidence. I don't know what we're going to do  
5 with that. But I have to give the Government a  
6 little bit of leeway to say, you know: Did you make  
7 any of these statements?

8 MR. BURKE: There was a point at which I  
9 was switching from being Edward's Troup's lawyer -- I  
10 never abandoned this -- but I just wondered about the  
11 hole being dug. I just want the Court to know that  
12 up here at the bench.

13 MR. CASTLE: One thing I'd note, when we  
14 were at the bench talking about whether Mr. Garcia  
15 should have a lawyer, one of the things that was  
16 probably persuasive was Ms. Armijo's statement that  
17 Mr. Garcia is all over the place; that he has changed  
18 his testimony from time to time. We have not had any  
19 of that in our discovery, only the one statement of  
20 they knew -- I think the Government was less  
21 surprised that apparently he's all over the place  
22 than maybe it appears to be.

23 MR. BECK: And, Your Honor, I will say that  
24 I read over a 3-inch binder full of Bates numbered  
25 discovery of Mr. Garcia's statements last night.

1 MR. CASTLE: Not implicating my client is  
2 what I'm talking about.

3 THE COURT: Well, I don't know what we're  
4 going to do with him. But he has -- he potentially  
5 has dug a deep hole for himself this morning. And I  
6 think we better stop it. And so --

7 MR. CASTLE: That goes as well for  
8 redirect?

9 THE COURT: Well, I still guess I've got to  
10 deal with this, you know, I think statement against  
11 interests issue.

12 MR. BECK: Probably do it by argument on  
13 the motions.

14 THE COURT: I'm not going to cut you off.  
15 I wasn't cutting Mr. Beck off, so I don't want to cut  
16 y'all off. Do what you want. But I'm going to tell  
17 the Government to bring it to a close because this is  
18 painful to watch.

19 MR. BECK: Okay.

20 (The following proceedings were held in  
21 open court.)

22 THE COURT: All right. Mr. Beck.

23 MR. BECK: Your Honor, I'm not sure I ever  
24 got a ruling on my motion to admit Government's  
25 Exhibit 5 and 6 for this hearing.



1 THE COURT: Any objection on 5 and 6?

2 MR. CASTLE: Judge, if I could have just a  
3 moment?

4 MR. BECK: And I'm going to highlight for  
5 the Court's attention --

6 MR. CASTLE: No objection.

7 THE COURT: Anybody else? Not hearing any  
8 objections, Government's Exhibits 5 and 6 will be  
9 admitted into evidence.

10 MR. BECK: I don't have my glasses on, so I  
11 can barely see that. But Government's Exhibit --  
12 I'll make it a little better for everyone here --  
13 Government's Exhibit 5 is Edward Troup's Offender  
14 Physical Location History. Government's Exhibit 6 is  
15 Mr. Garcia's Offender Physical Location History.

16 And what I want to highlight for the Court  
17 is that in 2009, there was an intake, which means  
18 that Mr. Garcia was brought back into custody. And  
19 then from June 2009, till October 2009, he was housed  
20 at the North 1-A pod, cell 102.

21 If you look at Mr. Troup's physical  
22 location history from July 9, 2009, till February 18,  
23 2010, Mr. Troup was also housed in North 1-A pod  
24 facility, C pod 108.

25 MR. CASTLE: Just a correction. One was in

1 A pod, one was in C pod.

2 THE COURT: Is that correct, Mr. Beck?

3 MR. BECK: That's correct. They were in  
4 the same housing unit, just in different pods. I  
5 think the Court is familiar with that from the first  
6 hearing, how the pod system works.

7 The United States would move to admit  
8 Government's Exhibit 7 first, which is an FBI 302  
9 dated 8/30/2011, Bates numbered DeLeon 15650?

10 THE COURT: All right. Are these being  
11 offered in lieu of further testimony?

12 MR. BECK: Yes, Your Honor.

13 THE COURT: All right. Any objection?

14 MR. BURKE: Your Honor, this actually came  
15 up when we were talking about bad acts.

16 Lance Roundy went to the Department of  
17 Corrections and got a tape. And this was the last  
18 bad act that was listed on the letter. And I  
19 mentioned at that time that we would need to, at some  
20 point, listen to the calls to establish a foundation  
21 for the speakers. But I have no objection to -- for  
22 the purpose that it's being offered today, but I just  
23 wanted to sort of give a heads-up to the Court that  
24 at some point we'll have to listen to the calls.

25 THE COURT: This is on your bad acts?

1 MR. BURKE: Remember, when we turn the  
2 page, the last one. So no objection for the purposes  
3 of the hearing today, but just to highlight.

4 THE COURT: Anyone else? All right. Then  
5 Government's Exhibit 7 will be admitted for this  
6 hearing.

7 MR. BECK: And Government's Exhibit 7 is a  
8 302 regarding a taped conversation between an  
9 individual known as Daffy and an inmate known as  
10 Edward Huero Troup. And is says that Daffy is  
11 identified as Sindicato de Nuevo Mexico Gang member,  
12 James Garcia.

13 The Government moves to admit Government's  
14 Exhibit 8, which is an FBI 302, Bates numbered 15647  
15 through 15648. And then there is a rough report of  
16 the same matter, which is Bates No. 2694 and 2695.

17 THE COURT: That's 8?

18 MR. BECK: Yes, Your Honor.

19 THE COURT: All right. Mr. Burke?

20 MR. BURKE: Same objection. And to explain  
21 one of the reasons we're making that objection, Your  
22 Honor, if you look at the first sentence of the third  
23 full paragraph, "Troup told Garcia that his, Troup's  
24 daughter, was dating an individual who was  
25 disrespecting her." Edward Troup doesn't have a

1 daughter, now -- so that's why I was curious about  
2 the foundation. And at some point we'll have to  
3 listen to those calls.

4 THE COURT: So for the limited purpose of  
5 this hearing, no objection?

6 MR. BURKE: Exactly so.

7 THE COURT: All right. Understanding there  
8 may be other issues with it, at least in this hearing  
9 we'll admit it. So Government's Exhibit 8 will be  
10 admitted into evidence.

11 MR. BECK: And then, Your Honor, just out  
12 of an abundance of caution, to establish foundation,  
13 I'm going to mark here as Government's Exhibit 2C,  
14 which I will ask the Court to file under seal. It is  
15 a redacted -- excuse me, it is an unredacted copy of  
16 2A.

17 THE COURT: Remind me. 2A was the  
18 transcript --

19 MR. BECK: Exhibit 2 is the redacted  
20 report, where the names and date of birth, the  
21 identifying information, is redacted from who the  
22 person interviewed was.

23 THE COURT: And this is a transcript of the  
24 interview that is reflected in the 302 that's  
25 Government's Exhibit 1?

1 MR. BECK: Right.

2 THE COURT: All right. Any objection?

3 MR. BURKE: No objection.

4 THE COURT: All right. So Government's  
5 Exhibit -- is this 8?

6 MR. BECK: This is Exhibit 2C.

7 THE COURT: Okay. This will be 2C.

8 MR. BECK: Right. As I said, the United  
9 States would file that under seal.

10 THE COURT: All right. It will be admitted  
11 into evidence.

12 MR. BECK: Then, finally, Government's  
13 Exhibit 9, the United States will move to admit and  
14 file under seal Government's Exhibit 9, which is --  
15 and I don't have more copies here. I didn't expect  
16 to do this. But it is a presentence investigation  
17 report from Criminal No. 13-CR-02729-001 RB, United  
18 States of America versus James Johnny Garcia. And it  
19 is unredacted because it has personal information, so  
20 the United States is moving to file that under seal.

21 THE COURT: Any objection?

22 MR. BURKE: No objection, Your Honor.

23 THE COURT: Anybody else? Not hearing any,  
24 Government's Exhibit 9 will be admitted into  
25 evidence.

1 MR. CASTLE: Your Honor, I don't really  
2 have an objection, but this is the kind of  
3 presentence report that we haven't gotten in  
4 discovery of the Government's witnesses, but  
5 apparently, they can access it when necessary. So at  
6 the break I'm going to ask that they make that effort  
7 with regard to all their witnesses.

8 THE COURT: Presentence reports?

9 MR. CASTLE: Yes.

10 MR. BECK: I don't know how we got that  
11 one, but I will find out and make the same endeavors  
12 for other witnesses.

13 THE COURT: All witnesses?

14 MR. BECK: Yes, I'm happy to do that.

15 THE COURT: What was 9? Whose PSR was  
16 that?

17 MR. BECK: It's Mr. Garcia's PSR from his  
18 2013 federal case down here in Las Cruces. Excuse  
19 me, James Garcia.

20 With that, Your Honor, no further  
21 questions.

22 THE COURT: All right. Thank you, Mr.  
23 Beck.

24 Mr. Castle?

25 MR. CASTLE: I have no further questions,

1 Your Honor.

2 THE COURT: All right. Mr. Burke?

3 MR. BURKE: No questions.

4 THE COURT: Anybody else have any questions  
5 of Mr. Garcia?

6 All right. Before I excuse Mr. Garcia, let  
7 me just make sure the statement that I'm looking at  
8 is located in Exhibit 1; is that correct, Mr. Castle?  
9 That's where it's located?

10 MR. CASTLE: Yes.

11 THE COURT: And your briefing on this is  
12 located where?

13 MR. CASTLE: It's 1909.

14 THE COURT: 1909. From a format  
15 standpoint, you know, I'm working on the chart for  
16 the James hearings. I may just put another chart  
17 separate apart for these evidentiary -- additional  
18 evidentiary issues, just sort of --

19 MR. BECK: And --

20 MR. CASTLE: Your Honor, there are several  
21 defendants who filed nearly identical --

22 THE COURT: The targeted ones?

23 MR. CASTLE: Yes. If the Court would like,  
24 we can have a paralegal prepare that chart with all  
25 the different motions, with the statement and the

1 motion that it belongs to, and a space next to it, if  
2 the Court --

3 THE COURT: This would be the additional  
4 statements that you need ruling on?

5 MR. CASTLE: Yes, non James.

6 THE COURT: What is the total number of  
7 those? I had a sense it was fairly small. Am I  
8 fooling myself, or is it more?

9 MR. CASTLE: I think for us it was five, I  
10 think.

11 MR. BECK: I think it's a small universe.  
12 I think Mr. Castle's 1909 doc does a good job of  
13 laying out those.

14 THE COURT: Let me think about it a little  
15 bit before you do anything. I may ask for it, I may  
16 not.

17 MR. BECK: And I think this is probably  
18 just the way these hearings have gone, there has been  
19 some confusion. The report with the statements that  
20 you're looking at is Government's Exhibit 2. So  
21 Government's Exhibit 1 doesn't exist for this  
22 hearing. So there is no Government's Exhibit 1 yet.  
23 So the statements that you're looking in what is --

24 THE COURT: The 302 that you put up there?

25 MR. BECK: That's Government's Exhibit 2,



1 right.

2 THE COURT: So 2; 2A is the transcript; 2B  
3 is the recording; and then 2C is the unredacted  
4 transcript?

5 MR. BECK: No. I think I mismarked them.  
6 And I can mark exhibit -- there is no transcript.  
7 There is the report which is 2; there is the  
8 recording which we'll supplement as 2A; and then I  
9 just marked the sealed document. And that was my  
10 fault -- I'm sorry, Ms. Bevel -- as 2C. I can change  
11 that to 2B if we would like.

12 THE COURT: So for Mr. Castle's statement,  
13 I need to look at 2?

14 MR. BECK: 2.

15 THE COURT: All right. I'm going to take  
16 you up, Mr. Castle. Why don't you prepare that  
17 chart, and if you'd just pull everybody's together.  
18 And if I understand what we're doing then, I've got  
19 the James statements that I need to rule on, and I've  
20 got this cluster of five-plus statements that I need  
21 to rule on. And then coming out of this week, those  
22 are the statements that y'all need some rulings and  
23 guidance on, right?

24 MR. CASTLE: That's correct, Your Honor.

25 THE COURT: Anything else?

1 MR. BECK: I think just to note that our  
2 pleading, which would be directed at these  
3 statements --

4 THE COURT: This would be the one you filed  
5 early this week or sometime over the weekend --

6 MR. BECK: Yes.

7 THE COURT: -- on statements against  
8 interests you'd want me to consider at the same time?

9 MR. BECK: That's right, Your Honor.

10 THE COURT: All right.

11 All right. Mr. Garcia, you may step down.  
12 Is there any reason that Mr. Garcia cannot be excused  
13 from the proceedings? Mr. Castle? Mr. Burke?

14 MR. CASTLE: No, Your Honor.

15 MR. BURKE: No, Your Honor.

16 THE COURT: Mr. Beck?

17 MR. BECK: No, Your Honor.

18 THE COURT: All right. You are excused  
19 from the proceedings. Thank you for your testimony.

20 Okay. All right. Are we still on what I'm  
21 calling 1292, which I guess is one of the old  
22 motions, but we're using it a bit as a placeholder  
23 here to get some additional statements in either  
24 James or otherwise?

25 Mr. Castle.

1 MR. CASTLE: Yes, we were going to take the  
2 telephone testimony of those two --

3 THE COURT: Oklahoma people?

4 MR. CASTLE: Yes, exactly, and it just  
5 takes a few minutes to set it up.

6 THE COURT: Are they calling in? Tell them  
7 to call the Meet Me conference line. Unless I'm  
8 saying something I shouldn't, it seems to me that's  
9 the way to do it. Tell them to call -- that number  
10 is, Ms. Bevel?

11 THE CLERK: (505) 348-2041.

12 THE COURT: That's mine up in Albuquerque?  
13 Mine here?

14 THE CLERK: They're the same.

15 THE COURT: And I read their motion last  
16 night or here recently, but remind me again, this is  
17 testimony for what motion and what purpose?

18 MR. CASTLE: It's for the motion to  
19 dismiss.

20 THE COURT: Motion to dismiss.

21 MR. CASTLE: Okay.

22 THE COURT: Who were these two people? Are  
23 both of them corrections officers that got married?

24 MR. CASTLE: Yes, they were STG officers  
25 who found love at work.

1 THE COURT: It will probably be quicker for  
2 you to give me that motion, which I think we already  
3 resolved. But what's their names, again?

4 MR. CASTLE: Jim Moore will be the first.

5 THE COURT: Cheryl Moore?

6 MR. CASTLE: No, Cheryl Lackey.

7 L-A-C-K-E-Y.

8 Your Honor, it's going to be a few minutes  
9 because the exhibits that they're going to look at  
10 are on their email because we sent them that way, and  
11 that's the same line they have to access to make the  
12 phone call. So they're going to take a minute or two  
13 to be on the internet.

14 THE COURT: Okay. Do you want to wait for  
15 them, or do you want to go to something else and come  
16 back to them? What do you prefer?

17 MR. CASTLE: I think we should wait for  
18 them, because we have another witness who has an  
19 attorney that's coming at 10:00, so we're going to  
20 try to squeeze these people in beforehand. These are  
21 short witnesses.

22 THE COURT: All right.

23 MR. GRANBERG: Your Honor, while we're  
24 here, maybe we might be able to squeeze in a short  
25 hearing on Mr. Chavez' Bad Acts.

1 THE COURT: All right. Any objection to  
2 doing that? Is that all right from the Government's  
3 standpoint?

4 MS. ARMIJO: Yes, Your Honor, I just have  
5 to find where -- I'm having computer issues, the  
6 email I sent him on what the last ones were.

7 THE COURT: Any objection to that, Mr.  
8 Castle?

9 MR. CASTLE: No objection.

10 THE COURT: Let me see if I can reconstruct  
11 what I did with your motion there.

12 MR. GRANBERG: It was document 1531.

13 THE COURT: All right. I think I have it  
14 in front of me. What I don't think I have, though,  
15 is the Government's letter. I don't think it was  
16 attached. So -- oh, here it is.

17 MS. ARMIJO: We may have some extra copies.

18 THE COURT: I got it. I found it.

19 MR. GRANBERG: And I believe the Government  
20 were going to amend their letter.

21 MS. ARMIJO: Yes, Your Honor, I believe --  
22 we met yesterday and we narrowed it down to six  
23 incidents plus some additional ones. So I will  
24 send -- I sent that in an email just because I'm  
25 having difficulties with my laptop here in the

1 courtroom, but I was able to send an email updating  
2 the list. So I believe Mr. Granberg has what exactly  
3 it is that we would be seeking.

4 THE COURT: Okay. Tell me, Mr. Granberg,  
5 just go through them here on the letter that you  
6 attached, and tell me which ones the Government has  
7 taken off the table, which are still in.

8 MR. GRANBERG: Your Honor, the Government  
9 took most of them off the table.

10 THE COURT: Okay.

11 MR. GRANBERG: I think it would be better  
12 to tell you which ones are still on the table.

13 THE COURT: Okay.

14 MR. GRANBERG: It would be on page 2 of the  
15 letter.

16 THE COURT: So the first page is totally  
17 off?

18 MR. GRANBERG: The first page is totally  
19 off. Page 2 of the letter, "On or about August 13,  
20 2000," is the first paragraph. That's still in.

21 THE COURT: August 13. So everything above  
22 that is out?

23 MR. GRANBERG: Everything above that is  
24 out, Your Honor.

25 The next paragraph, "On or about September

1 13," is still in.

2 The next paragraph, "On or about October  
3 8," is still in.

4 The next paragraph, "On or about October  
5 15," is still in.

6 The next paragraph, "On or about December  
7 21," is still in. "On or about October 25, 2001,"  
8 still in. "On or about" --

9 MS. ARMIJO: Not the 25th.

10 MR. GRANBERG: Not the 25th. Okay.

11 THE COURT: October 25th is out?

12 MR. GRANBERG: Okay. And "On or about  
13 March 17, 2006," is still in. And I believe the date  
14 is January 2.

15 MS. ARMIJO: Third?

16 MR. GRANBERG: January 3, 2018, is a new  
17 amended paragraph that the Government was going to  
18 allege. Does that sound right?

19 MS. ARMIJO: This one?

20 MR. GRANBERG: I thought it was the shank.

21 MS. ARMIJO: Oh, yeah. Those are separate.  
22 Yeah.

23 MR. GRANBERG: Right. So those are going  
24 to be --

25 MS. ARMIJO: On the letter, it is January

1 3, 2012. It is the second-to-the-last entry on the  
2 third page.

3 THE COURT: So there is not a new entry of  
4 January 3, 2018.

5 MR. GRANBERG: No, Your Honor, not on  
6 January 3. I believe there is going to be a new  
7 allegation.

8 MS. ARMIJO: So the new allegations include  
9 three different activities. And so we would have  
10 testimony that while he was -- Mr. Chavez was in  
11 Torrance, he was tattooing inmates, including Timothy  
12 Martinez, giving him his S for earning his Huesos.  
13 So there would be that.

14 There would also be the fact that the  
15 incident involving his new charge -- that there is a  
16 complaint on -- regarding the Suboxone. It's a  
17 conspiracy to distribute -- I'll have to go look to  
18 see exactly what the charge is, but it's an incident  
19 that involved him getting a new attorney.

20 THE COURT: Oh, yeah.

21 MS. ARMIJO: And Suboxone. And then we  
22 also have recently, within the last two weeks, even  
23 less, maybe, where he was found to be in possession  
24 of a shank at this facility.

25 So those would be the three new incidents



1 that I informed Mr. Granberg about that we would be  
2 seeking to get into.

3 And I believe, with that, we have kind of  
4 narrowed it down to activities while he was in the  
5 custody of New Mexico Corrections or with the U.S.  
6 Marshals, and most of them are drug-related, with the  
7 exception of the September 13, 2013, incident which  
8 is an assault that he committed with another SNM Gang  
9 member.

10 MR. GRANBERG: So Your Honor --

11 THE COURT: Let me make sure, though, that  
12 I understand on this letter. We crossed out the  
13 incident on October 25, 2001; correct, Ms. Armijo?

14 MS. ARMIJO: Yes. And also, I don't know  
15 if he said it because I was trying to check. We also  
16 crossed out December 21, 2000.

17 MR. GRANBERG: That is crossed out.

18 MS. ARMIJO: That is crossed out, as well.

19 THE COURT: Give me -- oh, the one right  
20 above it.

21 MS. ARMIJO: Yes. So on this page we  
22 should have five incidents.

23 THE COURT: Okay. That's August 13, 2000;  
24 September 13, 2000; October 8, 2000; and October 15,  
25 2000. What's the fifth one on this letter?

1 MS. ARMIJO: March 17, 2006.

2 THE COURT: And then everything below that  
3 is taken out.

4 MS. ARMIJO: Correct, Your Honor. And then  
5 the only other thing is, on the last page is the  
6 January 3, 2012, which I believe you have.

7 THE COURT: So everything but January 3 is  
8 out?

9 MS. ARMIJO: Correct.

10 THE COURT: And then we've got these three  
11 incidents.

12 MS. ARMIJO: Correct.

13 THE COURT: All right. Are you going to  
14 challenge any of those, Mr. Granberg? Do they look  
15 like things that probably are coming in?

16 MR. GRANBERG: Well, Your Honor, I would  
17 challenge the August 13, 2000, allegation, the  
18 October 8, 2000, allegation, the October 15, 2000,  
19 allegation, the March 17, 2006, allegation, and the  
20 January 3rd, 2012, allegation because all my  
21 arguments on those allegations are very similar, the  
22 same; that being that these allegations relate to  
23 possession of drug paraphernalia or possession of  
24 drugs or testing positive for drugs.

25 And I would submit to the Court that simply

1 by virtue of testing positive or possession of  
2 paraphernalia -- or testing positive for drugs is not  
3 in and of itself indicative of the pattern of  
4 behavior associated with the SNM. I would submit to  
5 the Court that probably half the jail, the inmates in  
6 the jail, are possessing drugs or testing positive  
7 for drugs. That's not just members of the SNM that  
8 are. I would submit to the Court that a far greater  
9 percentage of the population also does, as well. So  
10 I would submit to the Court there is not a  
11 sufficiently close link or nexus alleging -- linking  
12 these bad acts to SNM activity.

13 THE COURT: Ms. Armijo, I might have to  
14 have my memory refreshed on this, but here was what I  
15 thought we sort of did in the first trial with some  
16 of these. I may not exactly remember for sure the  
17 mechanism, but I thought we agreed that if the  
18 defendant wasn't going to challenge the fact that he  
19 had used drugs or possessed drugs, then what we would  
20 do is not necessarily go act by act, but we would let  
21 you do something to establish that, and then it would  
22 be unnecessary to just add it one on top of the  
23 other.

24 Does anyone remember exactly what we did on  
25 this drug issue? Because there was testimony and

1     there has been testimony either in the hearings or in  
2     the trial, people describe SNM different ways, but  
3     some of them described it as it's all about drugs,  
4     and so to establish either membership or they  
5     participate in something that was central to SNM, I  
6     was going to allow some evidence, but maybe not  
7     everything. So you see where I'm going, Mr.  
8     Granberg?

9             MR. GRANBERG: Yes, Your Honor.

10            THE COURT: Could you live with not  
11     challenging, pick one or so of these acts, and then  
12     we don't have to have them all in; they get a little  
13     cumulative at some point. If you're not going to  
14     challenge he doesn't do drugs, there is going to be  
15     evidence he does drugs, and we can move on.

16            MR. GRANBERG: So is the Court saying for  
17     me to pick one allegation and the rest are thrown  
18     out?

19            THE COURT: I hadn't gotten that specific,  
20     but that might be a good one that --

21            MS. ARMIJO: And Your Honor, I think you  
22     are correct. I think, in general, the way it worked  
23     out in the first trial -- and I think you are  
24     correct -- SNM and drugs and controlling it was a  
25     very important part of SNM, controlling the drugs in

1 prison, without how much they used drugs. And I  
2 think the way it generally played out was, we didn't  
3 specifically say, "On this day this person" -- well,  
4 that's because we could have done that a lot, but we  
5 have several cooperators, and I anticipate we will  
6 have in this trial, as well, who will say that  
7 Christopher Chavez -- "Yes, I supplied him with drugs  
8 or I knew he used drugs," and that's the way we took  
9 care of it.

10 THE COURT: Yeah.

11 MS. ARMIJO: As long as we're going forward  
12 with that, they don't have to prove all these  
13 individual acts, as long as that can be the way we go  
14 forward.

15 THE COURT: Could you live with that? That  
16 way, we don't have to go and just establish each one  
17 of these for a fairly limited point.

18 MR. GRANBERG: I could live with that, Your  
19 Honor.

20 THE COURT: So why don't we try to do that,  
21 just doing it like we did in the first trial. You'll  
22 have some witness that says Mr. Chavez uses drugs,  
23 and then that will come in uncontested and then we  
24 won't go act by act here.

25 All right. So that takes care of the drug

1 ones, which I think is just about everything in the  
2 letter, with the exception of the assault, which  
3 you're not challenging. Any challenges to the new  
4 three?

5 MR. GRANBERG: Yes, Your Honor. In regard  
6 to the new three, we would challenge the shank  
7 allegation. And in that particular instance,  
8 Mr. Chavez had received a new -- a cell mate in  
9 Lordsburg, had been his cell mate for about a month  
10 prior to the discovery of the shank. His cell mate's  
11 name was Misha or Mishka or some variation thereof.  
12 I'm not entirely sure of his name.

13 His cell mate actually gave the shank to  
14 Mr. Chavez, and Mr. Chavez didn't really want it.  
15 But on the particular day it was found -- it was  
16 found, from what I understand, on a weekend day --  
17 Mr. Chavez was transported for some sort of medical  
18 procedure and when he came back, his cell mate was  
19 gone, Mirnar or Misha, whoever that is; but also, in  
20 the interim, while he's out getting his medical  
21 evaluation, they find the shank in the cell.

22 So we would argue to the Court that the  
23 shank was not Mr. Chavez's and it belonged to his  
24 cell mate. His cell mate just left it in the cell  
25 when he was transported out of the cell, and it just

1 so happened that Mr. Chavez was also out of the cell  
2 at the time because he was getting his medical  
3 treatment, whatever that may be.

4 THE COURT: All right. Your link to SNM  
5 activity on this shank?

6 MS. ARMIJO: Your Honor, I think it's  
7 directly related to the charges in this case, because  
8 our evidence was that he told a correctional officer  
9 that he was actually going to use it on a  
10 correctional officer because he didn't want to go  
11 down.

12 And I was finding the exact email, but  
13 something to the effect of: He wasn't going to take  
14 a plea to 30 years, and he was going to use it on --  
15 or 50 years, something like that, and he was going to  
16 use it on a correctional officer. That's what I  
17 recall. The email that I first received about that  
18 incident indicated that he had made statements that  
19 he was going to use it on a correctional officer.  
20 I'm sorry, to a CI; not a correctional officer. He  
21 didn't make the statement to the correctional  
22 officer. He made that statement to a cooperating  
23 source.

24 MR. GRANBERG: And Your Honor, we  
25 believe --

1 THE COURT: Let me ask Ms. Armijo a  
2 question.

3 Tell me again how that's linked, though, to  
4 this case. What's the connection between "I'm not  
5 going to take a plea deal" and "I'm going to shank a  
6 corrections officer"?

7 MS. ARMIJO: Well, one, the important part  
8 would be shanking a correctional officer. Because as  
9 we know, the SNM does shank correctional officers.  
10 That's one of their signature things that they do.  
11 We also know that they bring them to court. We know  
12 that even during the trial, I think Baca was found as  
13 to have one in his cell. And so it would be  
14 consistent with SNM activity to always have a shank  
15 and carry a shank, which is what we've heard  
16 testimony about. But he did make the statement to a  
17 cooperating source about what he was going to do with  
18 it. And I guess that's --

19 THE COURT: How does shanking an officer  
20 help him not take a plea deal? I guess it looks like  
21 it would make his condition worse rather than help  
22 him out.

23 MS. ARMIJO: I would agree that it's a  
24 little bit inconsistent or it could be seen as he was  
25 not going to take a plea deal; he wanted to do --



1 possibly do suicide by correctional officer. I'm not  
2 really sure. And I haven't spoken to the cooperating  
3 person that made the statement. But the fact that he  
4 does have a shank is relevant, given -- and you may  
5 recall there were even shanks found where he was  
6 housed in Torrance. Throughout the pendency of this  
7 case, there have been shanks found at the different  
8 facilities throughout the time pending with this case  
9 with the SNM Gang members, and we have the  
10 cooperators talking about the shanks and their  
11 possible use.

12 THE COURT: All right, Mr. Granberg.

13 MR. GRANBERG: A couple points in response  
14 to that, Your Honor. One, while we do not know  
15 definitively, it's our belief that his cell mate  
16 Mishka was, in fact, the cooperating source. And I  
17 find it ironic that, one, this cooperating source  
18 alleges a statement that Mr. Chavez made saying that  
19 he was going to either shank a correctional officer  
20 or shank himself, commit suicide, but that this  
21 also -- this cooperating source supplied him that  
22 same shank.

23 Second, I have not sat through the entire  
24 Trial 1, but I don't believe it's alleged that  
25 shanking correctional officers is part and parcel of

1 being an SNM.

2 THE COURT: Here's what I do recall of the  
3 testimony either during one of the hearings or at the  
4 trial, was that one of the things that SNM members  
5 did was always have a shank, and always carry a  
6 shank. And so I guess I think I was fairly liberal  
7 with the Government on shanks in the first trial. I  
8 guess I'd be inclined to think that that was a little  
9 bit more of a signature thing of the SNM, that you  
10 just always had a shank.

11 MR. GRANBERG: Your Honor, if it is a  
12 signature of the SNM, then this would be the first  
13 and only bad act of Mr. Chavez having a shank.

14 THE COURT: Or he got caught. Might be  
15 pretty good at it.

16 MR. GRANBERG: Mr. Chavez has been in  
17 custody quite a bit throughout the years, and it's  
18 just ironic that the same cooperating source that  
19 alleges the statement to the CO or the suicide is  
20 also the same person that we alleged supplied him  
21 that shank.

22 THE COURT: Well, I'll give it some  
23 thought, but I think at the present time I'm going to  
24 allow that evidence in.

25 (Mr. Solis entered the courtroom.)

1 THE COURT: Anything on the other two?

2 MR. GRANBERG: No, Your Honor.

3 THE COURT: All right. So anything else,  
4 Mr. Granberg, you need guidance on?

5 MR. GRANBERG: No, Your Honor.

6 THE COURT: I'll give it some thought, but  
7 let's plan on that one coming in. I'll give it some  
8 thought.

9 MR. GRANBERG: And in reference to the drug  
10 use, there would just be one sort of global  
11 allegation made as far as the bad act is concerned on  
12 that?

13 THE COURT: I guess what you do is, at some  
14 point you just ask to establish that; correct, Ms.  
15 Armijo?

16 MS. ARMIJO: Yes, Your Honor. I think  
17 that, like I said, it would be witness testimony  
18 about, in general, the SNM. And then if there's  
19 specific cooperators that would say, "Yes, I supplied  
20 Mr. Chavez with drugs," or, "I did drugs with  
21 Mr. Chavez," that's the testimony that came in in the  
22 first trial, and which I would envision coming in in  
23 the second trial.

24 THE COURT: There is going to be a lot of  
25 evidence -- if you hear it twice and you think it's

1 getting cumulative, alert me, and I'll try to have my  
2 antennas up. But it may be hard for me alone to  
3 catch eight people's drug use. But I think it's  
4 better for you than having five, six separate  
5 incidents so...

6 MR. GRANBERG: Very well, Your Honor.

7 THE COURT: So if that works for you, we'll  
8 go with that.

9 MR. GRANBERG: Thank you, Your Honor.

10 THE COURT: Thank you, Mr. Granberg.

11 Do we have the Moores? Heard from them  
12 yet?

13 MR. COOPER: They probably are on the  
14 phone, Judge.

15 THE COURT: We're going to have to bring IT  
16 up. And they're going to have to take the system  
17 down and then take it up. If that's just an instant  
18 thing, then we'll just let them do it. If it's not  
19 going to be an instant thing, we may take a break and  
20 let him do it and then come back.

21 MR. COOPER: Thank you. I'll go sit down,  
22 Judge.

23 THE COURT: Well, you're welcome to stand.  
24 I just don't know the answer. I can't tell you how  
25 long it's going to take to do that. It's your call,

1 Mr. Cooper.

2 (A discussion was held off the record.)

3 MS. ARELLANES: Your Honor, Ms. Gutierrez  
4 requires a break.

5 THE COURT: All right. Let's just go ahead  
6 and take our break. We'll be in recess for about 15  
7 minutes and that will give everybody time to get set  
8 up.

9 (The Court stood in recess.)

10 THE COURT: All right. I think we've got  
11 everybody back into the courtroom. So every  
12 defendant has an attorney, and all the defendants are  
13 here. I think we have the telephone system working,  
14 so let's see if we can bring Mr. Moore and Ms. Lackey  
15 up on the phone.

16 All right. Mr. Moore, are you going to go  
17 first? Is that what's going to happen?

18 All right. Mr. Moore, if you'll raise your  
19 right hand to the best of your ability there, and my  
20 courtroom deputy, Ms. Bevel, will swear you in.

21 THE WITNESS: Okay.

22

23

24

25

1 JIM MOORE,  
2 after having been first duly sworn under oath,  
3 was questioned, and testified as follows:

4 THE CLERK: Give your full name and spell  
5 your last name.

6 THE WITNESS: Jim Moore. M-O-O-R-E.

7 THE COURT: Do you want to try that once  
8 again, Mr. Moore? You cut out on us.

9 THE WITNESS: Jim Moore.

10 THE COURT: All right. Mr. Moore.  
11 Mr. Cooper.

12 MR. COOPER: Thank you, Judge.

13 DIRECT EXAMINATION

14 BY MR. COOPER:

15 Q. Good morning, Mr. Moore. This is Bob  
16 Cooper. I represent Billy Garcia, and we're going to  
17 ask you a few questions today. We -- Mr. Garcia is  
18 the person who subpoenaed you to testify today. Have  
19 you had occasion to review the documents that we sent  
20 you?

21 A. Yes, I did.

22 Q. Now, Mr. Moore, back in 2001, you were the  
23 coordinator of the Security Threat Group at Southern  
24 New Mexico Correctional Facility; isn't that correct?

25 A. Correct.

1 Q. And how long were you so employed?

2 A. As coordinator, I was since 1998.

3 Q. 1998?

4 A. Yes.

5 Q. Until when?

6 A. 2006.

7 Q. Is that when you got to retire?

8 A. Yes, in a roundabout way.

9 Q. Okay. And you're presently living in  
10 Oklahoma, I take it?

11 A. Correct.

12 Q. So Mr. Moore, I'd like to direct your  
13 attention to the document that has Bates No. DeLeon  
14 606 at the bottom of it. You have it marked? It's  
15 Defendants' Exhibit G for identification purposes.  
16 Do you have that document in front of you?

17 A. Yes. Let me pull it up. Okay, I have it.

18 Q. Okay. So that document, up at the top,  
19 there are some numbers that says Primary Case Number  
20 281 D-AQ-54711-302. Is that the same document you're  
21 looking at?

22 A. Yes, it is.

23 Q. Now, do you recognize that document? Or do  
24 you recognize the content of that document, I should  
25 say?

1           A.    This is the first time I've seen the  
2   document.

3           Q.    Okay.  So in this document, it was prepared  
4   on April 4, 2001, and the document appears to set  
5   forth the details of a conversation that you had with  
6   Task Force Officer Edgar Rosa, down at Southern.  Do  
7   you know Edgar?

8           A.    Yes, I do.

9           Q.    How do you know him?

10          A.    Through work.

11          Q.    In 2001 there was a meeting that you had  
12   with Mr. Rosa, and in that meeting you told -- you  
13   stated that New Mexico State Police investigators  
14   Norman Rhoades and Felipe Gonzalez were in charge of  
15   the double homicides that occurred at Southern during  
16   the evening of March 24, 2001.  Do you recall having  
17   that conversation with him?

18          A.    It's been such a long time.  I know I met  
19   with him at the briefing.

20          Q.    Okay.  The part that I'm concerned with  
21   here is that in the next paragraph it says that you  
22   stated there were several suspects in the murder of  
23   Frank Castillo linked through trace evidence.  Task  
24   Force Officer Rosa confirmed this information with  
25   the investigator Rhoades, and then you stated that a



1 Southern New Mexico Correctional Facility source  
2 advised that the killings were ordered by Angel  
3 Munoz. You stated that Leroy Lucero, a validated SNM  
4 member, had paroled to Las Vegas, New Mexico.

5 Now, the source who said that the killings  
6 were ordered by Angel Munoz -- do you know who that  
7 source was?

8 A. I couldn't even remember.

9 Q. Okay. And in reading this document,  
10 nowhere on that document is the source identified;  
11 isn't that correct?

12 A. Correct.

13 Q. So you don't know who it was back on  
14 April -- or sometime between the murder and April  
15 4 -- stated that the murder was called by Angel  
16 Munoz, do you?

17 A. No.

18 Q. Okay. I'd like you to turn next to Exhibit  
19 H for identification purposes, if you will.

20 A. I'll pull it up.

21 Q. Let me know when you have it in front of  
22 you?

23 A. The computer takes a moment.

24 Q. I understand. So did you watch that  
25 Oklahoma basketball game yesterday?

1 A. No, I didn't.

2 Q. Probably just as well.

3 A. Yeah. All kinds of things going on.

4 I have a hard copy. What's the title?

5 Q. This is the document --

6 A. Here it is. I got it now.

7 Q. Okay. So you have Defendants' Exhibit H in  
8 front of you. At the bottom U.S. versus DeLeon, et  
9 al., 716?

10 A. Yes.

11 Q. That's a memorandum from you to Lawrence  
12 Tafoya, the warden down at Southern, concerning the  
13 murders of a couple of inmates, Mr. Garza and Mr.  
14 Castillo, that was prepared on April 2, 2001, by you;  
15 correct?

16 A. Correct.

17 Q. I'd like you to scroll to page 722 if you  
18 will.

19 A. Okay. I have it.

20 Q. That first paragraph says that "A  
21 confidential source was interviewed last night and he  
22 stated that inmate Castillo was killed because he had  
23 called ex-inmate George Manzanares' girlfriend, and  
24 George had answered the telephone. At one time his  
25 girlfriend, Cindy Garza, was involved with inmate

1 Frank Castillo."

2 Now, can you tell us who that confidential  
3 source was on that particular day?

4 A. I have no idea. It didn't come from us.

5 Q. Did you ever learn who that source was?

6 A. No, I never did.

7 Q. And why don't you read the rest of that  
8 page and see if you can tell whether or not the  
9 identity of that source is set forth in that report?

10 A. No, I don't see where it was revealed.

11 Q. Okay. Now, I'd like for you to go to  
12 Exhibit G, if you will. Or excuse me, I'm sorry, go  
13 to Exhibit N as in Nancy.

14 A. I have E, G, and H.

15 Q. Okay. You don't have an N?

16 A. No.

17 Q. Okay. Well, let me tell you what -- N  
18 appears to be another version of G. We're at DeLeon  
19 606. It states that on April 4, 2001, an inmate  
20 provided to law enforcement information that Angel  
21 Munoz ordered these murders. So it's another -- it's  
22 a different version of that same statement. So you  
23 would have the same answer with regard to whether or  
24 not you knew who the source was who told -- or gave  
25 information that Angel Munoz called the hit; right?

1 A. Right.

2 Q. So can you tell me, please, what a task  
3 force officer is -- and what sort of task force was  
4 it?

5 A. (Unintelligible) Edgar.

6 Q. I'm sorry, what was that?

7 A. Which task force are you referring to?

8 Q. The task force that existed in 2001, Edgar  
9 Rosa was a task force officer.

10 A. Okay, I don't really know all their job  
11 duties. I know that they track and identify gang  
12 members and investigate them, their dealings.

13 Q. And that was a federal task force, wasn't  
14 it? Or a task force involving various agencies,  
15 including the federal government?

16 A. Correct.

17 Q. Okay. Now, why were you providing  
18 information to the task force officer?

19 A. Part of my job as the coordinator there was  
20 to act as the liaison to the outside law enforcement  
21 agencies.

22 Q. I'm sorry, I didn't quite get all of that,  
23 Mr. Moore. Can you repeat that for me?

24 A. My job was to act as a liaison to the  
25 outside law enforcement agencies.

1 Q. And you did that in this particular case?

2 A. Correct.

3 Q. So in the last couple of years or since,  
4 oh, maybe the beginning of 2015, has anybody from the  
5 United States Attorney's Office or the FBI or a task  
6 force contacted you with regard to this case?

7 A. No.

8 Q. Going back to your duties as STG  
9 coordinator, in the operation of the Security Threat  
10 Group, how would you keep track of confidential  
11 sources or people who gave you information with  
12 regard to gang members or other security threat  
13 groups?

14 A. There's two different ways. One, you can  
15 create a list of inmates that you -- provide you with  
16 information that is proven to be confidential and  
17 true. And that list is maintained in the warden's  
18 office.

19 Another way --

20 Q. And so if you would, if you would receive  
21 information from an individual that you felt belonged  
22 on that list, how often would you place that  
23 information on the list that was maintained in the  
24 warden's office? Would you do it on a daily basis,  
25 weekly basis, whenever you got it?

1 A. About whenever I got it.

2 Q. And would you do it that day?

3 A. Yes.

4 Q. And you would prepare a memo --

5 A. Right.

6 Q. -- setting forth the information? Then  
7 that memo would be filed -- was it kept in a notebook  
8 or a file folder?

9 A. I don't know. I just turned the memo over  
10 to them.

11 Q. To who?

12 A. The warden's office.

13 Q. The warden himself, or somebody there in  
14 his office?

15 A. Not the warden, but there is another -- I'm  
16 talking slow because the phone is repeating itself.

17 Q. Okay.

18 A. Another source list can be maintained with  
19 each incident, such as this case.

20 Q. So there would have been a file just on the  
21 murders of Garza and Castillo?

22 A. Yes.

23 Q. And who maintained that file?

24 A. The warden's office.

25 Q. So he would have that file and the list of

1 information from confidential sources?

2 A. Correct.

3 Q. And would you share the list of  
4 confidential sources with the task force officers?

5 A. No. I just turned it over to him, and he  
6 forwarded it to Central Office.

7 Q. Oh, okay. So would the warden at Southern  
8 maintain a list of confidential information and then  
9 forward a copy to the Central Office? Is that how it  
10 worked?

11 A. I'm not sure. It's per policy.

12 Q. So whatever the policy states, that's what  
13 should have been done?

14 A. Correct.

15 Q. And the policy provides that a logbook is  
16 kept at the warden's office; correct?

17 A. Correct.

18 Q. Have you ever seen the logbook at the  
19 warden's office?

20 A. I don't believe so.

21 Q. You never had occasion to go in and see  
22 what was submitted prior to any submission that you  
23 made?

24 A. No. I don't think it had sources.

25 Q. So did you keep a separate file for

1       yourself?

2           A.     No.

3           Q.     So if you had Johnny, for instance, who  
4       gave you information in 1998 and three other guys  
5       gave you information the next month, and it was about  
6       a particular incident, then six, eight months later  
7       somebody else gives you information, do you have any  
8       way of going back to see what Johnny said and what  
9       the other three guys have said?

10          A.     If I need to, I could access my information  
11       by asking the warden to give me the information that  
12       I need or I provided before.

13          Q.     So these confidential sources who would  
14       give information -- would each of them have an  
15       alphabetical file? This is Johnny, this is Billy,  
16       this is Joey, and all of the information that Johnny  
17       gave in one file for Johnny?

18          A.     I'm not sure how it's filed up there.

19          Q.     Okay. What about your computer? When you  
20       would generate a report, a document, to send to the  
21       warden, what would happen to your computer file? Did  
22       you keep it?

23          A.     No, I wouldn't save it.

24          Q.     You would not save it at all?

25          A.     If it was confidential information, I



1 wouldn't save it on my computer. I would not save it  
2 on my computer. Are you there?

3 Q. I'm here. I'm sorry, Mr. Moore, I'm just  
4 thinking.

5 So if we needed information about a  
6 confidential source, there would be two places to  
7 obtain that information: One would be in the  
8 warden's office; and the second place would be at the  
9 Central Office; correct?

10 A. Correct.

11 Q. Now, what about information that is shared  
12 to task force officers? Do you have a logbook as to  
13 what was shared with them?

14 A. I never kept one.

15 Q. So you never kept a logbook at all?

16 A. Not of confidential information.

17 Q. Well, Mr. Moore, I really appreciate you  
18 taking time to talk with us this morning. I don't  
19 believe that I have any further questions of you.  
20 There may be other individuals that are going to come  
21 up and ask some questions of you, but that's all I  
22 have, so thanks again.

23 THE COURT: Thank you, Mr. Cooper.

24 THE WITNESS: Thank you.

25 THE COURT: Mr. Burke, did you have

1 anything? Any other defendants have any direct  
2 examination of Mr. Moore?

3 Mr. Beck? Do you have cross-examination of  
4 Mr. Moore?

5 MR. BECK: I do, Your Honor.

6 THE COURT: Mr. Beck.

7 CROSS-EXAMINATION

8 BY MR. BECK:

9 Q. Good morning, Mr. Moore.

10 A. Good morning.

11 Q. My name is Matt Beck, and I'm an assistant  
12 U.S. Attorney. I want to talk to you about  
13 Defendants' Exhibit G, which was the FBI 302 report  
14 that you hadn't seen. I think the Bates No. on the  
15 bottom is DeLeon et al., 606. Let me know when you  
16 see that.

17 A. I see it. I still have it.

18 Q. All right. So I want to talk to you about  
19 what's the third paragraph in there where it starts  
20 out with, "Moore stated that there were several  
21 suspects in the murder of Frank Castillo." Do you  
22 see that?

23 A. Yes.

24 Q. It says here that -- in that second  
25 sentence, I think, Mr. Cooper talked to you about, it

1 says, "Moore stated that an SNMCF source advised that  
2 the killings were ordered by Angel Munoz." Do you  
3 see that?

4 A. Yes.

5 Q. Now, was that your personal source, or was  
6 that just a source from Southern New Mexico  
7 Correctional Facility?

8 A. I don't recall.

9 Q. Now, moving on there, I'm going to skip a  
10 couple sentences, and I'm going to go to that last  
11 sentence where it says that "Moore stated that a  
12 vacancy was created upon Lucero's departure, causing  
13 a struggle for control of the drug trade."

14 Is that your information, or is that  
15 information based on a source, or do you know?

16 A. I don't recall.

17 Q. Now, in that next paragraph I'm going to  
18 talk about the third and last sentence in there. Do  
19 you see where it says, "Moore stated that Garcia was  
20 believed to have been involved in the killing, but  
21 there was no evidence linking him to the killings."  
22 Do you see that sentence?

23 A. Yes.

24 Q. And do you know whether -- and again, it  
25 looks like, from the first sentence, this is still

1 referring to Billy Garcia. Is that your  
2 understanding of this sentence?

3 A. Yes.

4 Q. And where it says, "Garcia was believed to  
5 have been involved in the killing but there was no  
6 evidence," is that your belief or a belief based on a  
7 source, if you know?

8 A. It's based on a source, I believe, but it's  
9 just not my words.

10 Q. And that makes sense; right? Because a lot  
11 of the information you get about the SNM is from  
12 sources; isn't that true?

13 A. Correct.

14 Q. And so is this the same source as the  
15 source in the last paragraph that advised it was a  
16 hit by Angel Munoz, who said that that source  
17 believed that Garcia was involved in the killing?

18 A. I wouldn't know.

19 Q. And then that last sentence, "Moore stated  
20 a prison source informed him that Castillo was killed  
21 because he didn't follow through with an order to  
22 kill."

23 It sounds like in that sentence, at least,  
24 that may have been your source. Is that fair to say?

25 A. It may have been, but like I said, I don't

1 recall.

2 Q. Sure. I understand that. I want to take  
3 you to the other exhibit that you looked at, which  
4 was Defendants' Exhibit H. It's a memorandum about  
5 the Garza and Castillo murders, which starts on what  
6 I call Bates No. DeLeon 716. Let me know when you  
7 have that in front of you.

8 A. Is it dated Monday, April 2?

9 Q. That's the one.

10 A. Okay. I got it.

11 Q. All right. And I want to turn back to the  
12 page that you went over with Mr. Cooper, page 7  
13 there. Let me know when you've got that page in  
14 front of you.

15 A. 722?

16 Q. Yes.

17 A. Okay.

18 Q. And so I think Mr. Cooper went over that  
19 first paragraph. Is the confidential source in that  
20 paragraph your source, an STG source, or is it a New  
21 Mexico Gang Task Force source?

22 A. Gang task force.

23 Q. And do you know whether that's a state gang  
24 task force or a federal gang task force, if you know?

25 A. I'm not sure.

1 Q. And then so if we read that paragraph, it  
2 says that "That source said that inmate Castillo was  
3 killed because he had called ex-inmate George  
4 Manzanares' girlfriend, and George had answered the  
5 telephone." Do you see that?

6 A. Yes.

7 Q. And that last sentence in the paragraph  
8 says, "This information is in the process of being  
9 verified by the STG unit to see if a telephone call  
10 was placed." Do you see that sentence?

11 A. Yes.

12 Q. And as the STG coordinator, is this  
13 something that the STG would do, is follow up on  
14 inmate sources about gang activity?

15 A. Yes.

16 Q. And I want you to turn now to the next page  
17 in that Bates No. DeLeon 723 and page 8. Are you  
18 there?

19 A. I'm here.

20 Q. And then the last paragraph on that page,  
21 page 8, do you see where it says, "SNM task force  
22 contacted STG Unit, the number blank belonging to  
23 Cindy Garza, George Manzanares' girlfriend. The  
24 number was checked back to January of 2000. No  
25 attempts were made to dial this number from SNMCF."

1 Do you see that?

2 A. Yes.

3 Q. So does that indicate to you that STG did  
4 follow up and found that the information about the  
5 call was actually not accurate?

6 A. Yes. Correct.

7 Q. And Edgar Rosa -- do you know whether he  
8 was on a state or a federal task force, or both, if  
9 you know?

10 A. I don't know for sure.

11 Q. I think you said on direct -- I wrote it  
12 down here -- that you acted -- as the STG  
13 coordinator, you acted as a liaison to outside law  
14 enforcement. Do you remember that?

15 A. Correct.

16 Q. Was that a liaison to all outside law  
17 enforcement, or just some particular group?

18 A. All.

19 Q. And I think you said all; right?

20 A. Yes.

21 Q. All right.

22 MR. BECK: No further questions, Your  
23 Honor.

24 THE COURT: Thank you, Mr. Beck.

25 Mr. Cooper, do you have redirect of

1 Mr. Moore?

2 MR. COOPER: I do.

3 THE COURT: Mr. Cooper.

4 MR. COOPER: Thank you, Judge.

5 REDIRECT EXAMINATION

6 BY MR. COOPER:

7 Q. Mr. Moore, I'd like to direct your  
8 attention to document Exhibit G, please. Let me know  
9 when you have that up again.

10 A. Okay. I have it.

11 Q. Okay. The next-to-the-last paragraph says  
12 that "Task Force Officer Rosa advised Moore that  
13 inmate Billy Garcia was being targeted by the SNM";  
14 is that correct?

15 A. I see it, yes.

16 Q. And do you know who the individual was that  
17 gave that information?

18 A. No, I don't.

19 Q. I'd like to take you back to the line of  
20 questioning from Mr. Beck with regard to Cindy Garza,  
21 the girlfriend, okay? And he says that -- or you  
22 indicated to Mr. Beck that a search of phone records  
23 did not show what -- or that there was a call to a  
24 particular number. But you don't know what number --  
25 you don't know all of the numbers, or if Cindy Garza



1 was using a particular number at that time, do you?

2 A. Just one particular number was searched.

3 Q. Okay. And that's all that was searched;

4 correct?

5 A. As far as I know.

6 Q. Okay. Thank you, sir.

7 MR. COOPER: I have no further questions.

8 THE COURT: Thank you, Mr. Cooper.

9 Does any other defendant have any redirect?

10 Mr. Burke? Anybody? All right.

11 MR. GRANBERG: I do.

12 THE COURT: All right. Mr. Granberg.

13 CROSS-EXAMINATION

14 BY MR. GRANBERG:

15 Q. Mr. Moore, do you have Exhibit G still in  
16 front of you?

17 A. Yes.

18 Q. On the third paragraph, in the middle of  
19 the third paragraph, it says that Leroy Lucero had  
20 paroled to Las Vegas, New Mexico. Do you see that  
21 sentence?

22 A. Yes, I do.

23 Q. Do you know when he had paroled to Las  
24 Vegas, New Mexico?

25 A. No, I don't.

1 Q. Do you know if it was before the murders or  
2 after the murders?

3 A. I can't remember.

4 MR. GRANBERG: All right. Pass the  
5 witness.

6 THE COURT: Thank you, Mr. Granberg.

7 Any other defendant have any redirect?

8 All right, Mr. Moore. Thank you for your  
9 testimony.

10 Is there any reason Mr. Moore cannot be  
11 excused in the proceedings, Mr. Cooper?

12 MR. COOPER: No, Your Honor.

13 THE COURT: Mr. Beck?

14 MR. BECK: No, Your Honor.

15 THE COURT: All right. You are excused  
16 from the proceedings. Thank you for your testimony,  
17 Mr. Moore.

18 Is Ms. Lackey now going to come on the  
19 phone?

20 MR. MOORE: Yes.

21 THE COURT: Thank you, Mr. Moore.

22 Ms. Lackey, this is Judge Jim Browning in  
23 Albuquerque -- or we're actually in Las Cruces, down  
24 here. I'm going to have my courtroom deputy, Ms.  
25 Bevel swear you in. So if you'll stand and raise

1 your right hand, we'll swear you in at this time.

2 MS. MOORE: Yes, sir.

3 CHERYL MOORE,

4 after having been first duly sworn under oath,

5 was questioned, and testified as follows:

6 THE CLERK: Please state your name and  
7 spell your last name for the record.

8 MS. MOORE: My name is Cheryl Moore.

9 M-O-O-R-E.

10 THE COURT: All right. Ms. Moore.

11 Mr. Castle.

12 MR. BECK: Your Honor, before we get into  
13 this document, I don't want to cut anybody off, but  
14 it might short-circuit it. Last night in preparing  
15 for his testimony, Special Agent Acee went through  
16 this document and believes he identified the three  
17 sources at issue in Mr. Garcia's motion to dismiss  
18 for this source.

19 THE COURT: All right. Do you want to give  
20 that information to the defendants?

21 MR. BECK: Sure. Yes.

22 MR. CASTLE: I'd still like to follow up  
23 with a few questions.

24 THE COURT: You're welcome to. Do you want  
25 the information after or before?

1 MR. CASTLE: I just got it.

2 THE COURT: You just got it? All right.

3 Mr. Castle.

4 DIRECT EXAMINATION

5 BY MR. CASTLE:

6 Q. Ms. Moore, was your maiden name Lackey?

7 A. Yes, sir.

8 Q. In 2001, were you working at the Southern  
9 New Mexico Correctional Facility as an STG officer?

10 A. Yes, sir.

11 Q. In that regard, do you recall a murder --  
12 two murders happening on March 26 of 2001?

13 A. Yes, sir.

14 Q. Before you do you have an exhibit that is  
15 labeled Exhibit E?

16 A. Just a second. It's dated July 11, 2001?

17 Q. Yes.

18 A. To Mr. Moore?

19 Q. Yes, to Mr. Moore from Cheryl Lackey?

20 A. Yes, sir. I have it.

21 Q. Is that document a list of various  
22 confidential sources that you interviewed in relation  
23 to the March 26, 2001, murders?

24 A. This is a compilation of interviews  
25 conducted by multiple interviewers and officers.

1 Sources were turned over to Mr. Moore, who then  
2 turned them over to the warden's office.

3 Q. Do you recall whether you interviewed an  
4 inmate by the name of Jimmie Gordon? I don't know if  
5 you could hear that. Jimmie Gordon.

6 A. Yeah, I --(unintelligible).

7 Q. Could you start over on that one? We had a  
8 little sound in the courtroom that made it impossible  
9 for us to hear you.

10 A. I may have interviewed the inmates, but if  
11 I didn't supply a memo, it probably didn't happen.

12 Q. Could you repeat that again? I'm not sure  
13 I could hear you. And if you can just speak slowly  
14 because I think our connection is not very good.

15 A. Okay. I note the inmate this is referring  
16 to. I had interviewed him, but I don't remember  
17 interviewing him for this murder.

18 Q. Okay. Was he a reliable source of  
19 information?

20 A. I had interviewed him before, and he had  
21 given us information that was corroborated.

22 Q. Okay. So he provided information in the  
23 past that you deemed reliable because you were able  
24 to corroborate its accuracy?

25 A. Yeah.

1 Q. When you interviewed sources, would you  
2 create a report that would use some kind of a numeric  
3 designation for that source instead of their name?

4 A. Yes.

5 Q. What would you do to record the actual name  
6 of the source?

7 A. I gave the name and the number that I  
8 assigned to him to my boss, who gave it to the warden  
9 for his list.

10 Q. Okay. Let me see if I can repeat that  
11 using a question of mine. Does it sound like you  
12 would record the name of the individual on a separate  
13 document and then provide that to your supervisor,  
14 who would then give it to the warden?

15 A. Yeah. I would write it down in print form,  
16 yes.

17 Q. Would you use a logbook, or would these be  
18 separate documents?

19 A. It was just a separate document given to  
20 him. We didn't keep a log of the informant in the  
21 office.

22 Q. In the last few years until you received  
23 this subpoena, had you been contacted by any  
24 individuals at all about this 2001 murder, murders?

25 A. No, sir.

1 Q. Is that no, sir?

2 A. Yes. No.

3 Q. I apologize. That's a bad question. Was  
4 your answer no, you haven't been interviewed by  
5 anyone?

6 A. No, I have not. I have not.

7 MR. CASTLE: Your Honor, given the  
8 Government's statement that they have identified the  
9 sources in question, I have no other questions for  
10 this witness.

11 THE COURT: Thank you, Mr. Castle.

12 Any other defendant have any  
13 cross-examination of Ms. Moore?

14 Mr. Beck, do you have cross-examination of  
15 Ms. Moore.

16 MR. BECK: I don't. Thank you, Your Honor.  
17 Thank you, Ms. Lackey.

18 THE COURT: All right. Ms. Moore, thank  
19 you for your testimony.

20 Is there any reason that Ms. Moore cannot  
21 be excused from the proceedings, Mr. Castle?

22 MR. CASTLE: Yes, Your Honor.

23 THE COURT: Mr. Beck?

24 Not hearing any objection, Ms. Moore, you  
25 are excused from the proceedings. Thank you for your

1 testimony.

2 MS. MOORE: Thank you.

3 THE COURT: All right. Where are we going  
4 next? Do we have some witnesses we need to take care  
5 of, Mr. Castle?

6 MR. CASTLE: Yes, Your Honor, we have some  
7 inmate witnesses that the marshals would like us to  
8 call and get on their way.

9 THE COURT: All right. Give me the first  
10 one.

11 MR. CASTLE: The first one is Frederico  
12 Munoz, and he is relevant to the motion regarding  
13 statements 1909.

14 THE COURT: All right. And is it one  
15 particular statement, or all of them, or which one is  
16 he relevant for?

17 MR. CASTLE: I apologize, Your Honor, I  
18 was --

19 THE COURT: Is it a particular statement  
20 he's relevant for?

21 MR. CASTLE: Yes, it's several statements.  
22 He had indicated that he had talked to a number of  
23 the defendants about the 2001 murders; and when he  
24 talked to them, they had confessed to their  
25 involvement and also implicated or possibly



1       implicated Mr. Garcia. I was not intending to ask  
2       about any other homicides; just that.

3               Judge, if I could have a moment, Mr.  
4       Benjamin has some information.

5               THE COURT: You may.

6               MR. CASTLE: Your Honor, Mr. Munoz's  
7       attorney was down in the holding cell, so it might be  
8       a minute. I can fill the time.

9               THE COURT: Okay.

10              MR. CASTLE: Your Honor, Billy Garcia's  
11       motion concerning bad acts is number 1308.

12              THE COURT: All right. I have it in front  
13       of me.

14              MR. CASTLE: The Government has indicated  
15       they're limiting themselves to two acts.

16              THE COURT: Okay.

17              MR. CASTLE: The first one is on page 6 of  
18       that -- well, it's the sixth page, but it's the first  
19       page of their letter, which is an act dated February  
20       25, 1992.

21              THE COURT: The very last one on that page?

22              MR. CASTLE: Yes.

23              THE COURT: The ones above it they're not  
24       going to seek to introduce?

25              MR. CASTLE: That's correct, Your Honor.

1 THE COURT: All right.

2 MR. CASTLE: Your Honor, we would object to  
3 that on a number of grounds. First of all,  
4 remoteness. In our Bad Acts motion we provided a  
5 citation to Tenth Circuit case law that talked about  
6 remote acts not being admissible. And I understand  
7 that the Government would be offering this as  
8 enterprise evidence, but I believe the bad acts under  
9 404 are the same as direct evidence. Under 404,  
10 you're allowed to bring in bad acts for a particular  
11 purpose including identification, which is an element  
12 of the offense. So enterprise evidence should be  
13 analyzed in the same fashion because it's just a way  
14 to prove an element, the enterprise element.

15 So going back to 1992 is remote in time,  
16 and we believe for that reason it should not be  
17 admitted.

18 The second reason is: The defense has not  
19 been provided with any real discovery on this, any  
20 discovery, and it's just a note in his STG file with  
21 a date and a finding that he had threatened a  
22 correctional officer. No indication of who that is,  
23 and obviously, no discovery about what had happened  
24 there, what the circumstances were, whether it was  
25 gang-related, anything of that nature. It's just

1 that he threatened a correctional officer.

2 Because they're offering this as evidence  
3 of enterprise of the element of the crime itself,  
4 their obligations to produce extend to that, and so  
5 we would argue against that.

6 Does the Court want me to take a break?

7 THE COURT: What would you prefer? Do you  
8 want to go ahead and take the witness?

9 MR. CASTLE: Yeah, go ahead and take the  
10 witness.

11 THE COURT: All right. We'll come back to  
12 that, then.

13 All right, Mr. Munoz. I know you've just  
14 got seated, but if would you stand again, raise your  
15 right hand to the best of your ability, my courtroom  
16 deputy, Ms. Bevel, will swear you in.

17 FREDERICO MUNOZ,  
18 after having been first duly sworn under oath,  
19 was questioned, and testified as follows:

20 THE CLERK: Be seated and spell your last  
21 name for the record.

22 THE WITNESS: Federico Munoz. M-U-N-O-Z.

23 THE COURT: Does your attorney want to  
24 enter and appear as well?

25 MR. LOPEZ: Louis Lopez on behalf of Mr.

1 Munoz. I'm present.

2 THE COURT: All right, Mr. Lopez, good  
3 morning to you.

4 MR. LOPEZ: Good morning.

5 THE COURT: All right, Mr. Munoz.  
6 Mr. Castle.

7 DIRECT EXAMINATION

8 BY MR. CASTLE:

9 Q. Good morning, Mr. Munoz.

10 A. Good morning.

11 Q. I'm Jim Castle. I represent Billy Garcia,  
12 who is here in the courtroom. The questions I'm  
13 going to direct to you are related to a pair of  
14 murders that happened in March of 2001 at the  
15 Southern New Mexico Correctional Facility. Do you  
16 know what murders I'm talking about?

17 A. Yes, I do.

18 Q. You weren't at the facility when that  
19 happened; is that right?

20 A. I was at the State Penitentiary in Santa  
21 Fe, New Mexico.

22 Q. So in regards to those murders, if you  
23 could look in the courtroom here at the defendants  
24 and tell us if any of the defendants other than  
25 Mr. Garcia have had conversations with you at any

1 time about their involvement, potential involvement,  
2 in those murders.

3 MS. ARMIJO: And Your Honor, I'm going to  
4 object. This is clearly a fishing expedition. If he  
5 wants to -- my understanding is, he wanted to  
6 confront him with a statement, a specific statement  
7 that Mr. Munoz made regarding his client. This  
8 clearly is a fishing expedition to just get out what  
9 Mr. Munoz would be testifying about.

10 THE COURT: I'm a little concerned about  
11 the breadth of it, Mr. Castle. How is this relevant  
12 to the statements?

13 MR. CASTLE: Well, it would be statements  
14 of co-defendants. The follow-up question would be:  
15 If they made a statement, did they implicate my  
16 client? And then I would focus in on those.

17 THE COURT: Well, why don't we target it  
18 more to the statements that you have in your document  
19 1909? Why don't you focus it more on that, rather  
20 than the other one, which is a little bit broader,  
21 more discovery-related.

22 BY MR. CASTLE:

23 Q. Mr. Munoz, do you know an individual by the  
24 name of Christopher Chavez?

25 A. No, sir, not that I can remember.

1 Q. Did you know an individual by the name of  
2 Joe Gallegos?

3 A. Vaguely, yes.

4 Q. Did Mr. Gallegos make a statement about his  
5 potential involvement in the 2001 murders?

6 A. Not that I'm aware of.

7 Q. But Mr. Garcia, Billy Garcia, did make one  
8 to you?

9 A. No, sir.

10 Q. Okay. Thank you very much.

11 MR. CASTLE: I have no other questions.

12 THE COURT: Thank you, Mr. Castle.

13 Any other defendants? Mr. Burke, do you  
14 have questions?

15 DIRECT EXAMINATION

16 BY MR. BURKE:

17 Q. Good morning. My name is Pat Burke. I'm  
18 co-counsel for Edward Troup. It has been alleged  
19 that you had a conversation with Mr. Troup at some  
20 point regarding the Freddie Sanchez homicide. Do you  
21 ever recall talking to Mr. Troup about that?

22 A. Yes, I do.

23 Q. Where were you and where was he?

24 A. He and I were at the Level 6 at The State  
25 penitentiary in Santa Fe, New Mexico.

1 Q. And I have not there been, but I understand  
2 that is a facility that has a lot of buildings and  
3 different pods and different units. And so what I  
4 would like you to do, Mr. Munoz, is tell me exactly  
5 where you were and exactly where he was, so that it  
6 would be more specific than just saying "PNM."

7 A. Okay. He and I lived in the same housing  
8 unit. We were in different pods --

9 Q. Which housing unit was that? I'm sorry for  
10 interrupting, because I really want this to be quick  
11 just like you do?

12 A. Housing unit 1-A.

13 Q. Where was he?

14 A. I don't know which pod he was in, but we  
15 both had access to the same recreation yard,  
16 irrespective of the pod in which we lived, and we  
17 were both outside in the rec yard at one point and we  
18 had a conversation.

19 Q. So one conversation?

20 A. Yes.

21 Q. Correct. And do you know the month and  
22 year of that conversation?

23 A. It was immediately after the homicide of  
24 Freddie Sanchez occurred, and he was returned back to  
25 Level 6.

1 Q. Okay. So within a week of the homicide?

2 A. I would say more or less, yes.

3 MR. BURKE: That's all I have for you.

4 Thank you.

5 THE COURT: Thank you, Mr. Burke.

6 Any other defendant have direct examination  
7 of Mr. Munoz?

8 All right, Ms. Armijo.

9 CROSS-EXAMINATION

10 BY MS. ARMIJO:

11 Q. Good morning, Mr. Munoz.

12 A. Good morning.

13 Q. Now, in regard to the murders of Frank  
14 Castillo and Rolando Garza, you indicated that you  
15 were up at PNM; correct?

16 A. Yes.

17 Q. Were you at the North or the South?

18 A. I was at the North.

19 Q. At the North. Prior to those murders, you  
20 had information that those murders were going to  
21 occur; correct?

22 A. Yes.

23 Q. And in fact, in reference to Garza, did you  
24 actually have a role or sanction that?

25 A. I believe I did, yes.



1 Q. Now, you previously -- and I'm going to  
2 show you --

3 MS. ARMIJO: May I approach the witness,  
4 Your Honor?

5 THE COURT: You may.

6 BY MS. ARMIJO:

7 Q. And I'm showing you Bates 41986 which is a  
8 report in reference to a debrief that you made, and  
9 you made a statement regarding Billy Garcia.

10 A. Yes.

11 MR. CASTLE: Your Honor, actually, this is  
12 improper. I think they have to ask a question first  
13 before they refresh a witness' memory.

14 THE COURT: Well, I don't know if he's  
15 refreshing -- or if she's refreshing or not. She can  
16 show him the exhibit. Let's see what the question  
17 is. Overruled.

18 BY MS. ARMIJO:

19 Q. Did you make a statement in reference to  
20 Billy Garcia's role in those murders?

21 A. Yes, I did.

22 Q. Okay. And what is -- what information do  
23 you have about Billy Garcia in reference to, just so  
24 we're specific, the Frank Castillo and the Rolando  
25 Garza murders?

1           A.     I was aware that Mr. Garcia was classified  
2     to be released from the Level 6 to go down to the  
3     State Penitentiary in Las Cruces, and I immediately  
4     began lobbying him and telling him that there was a  
5     guy over there that needed to get killed.

6           Q.     Okay. And who was that guy?

7           A.     Rolando Garza.

8           Q.     And what did Mr. Garcia say to you when  
9     you, quote, lobbied him for the murder of Garza?

10          A.     That he would handle it. He already knew  
11     the reasoning behind my effort to have Looney,  
12     Rolando Garza, killed, and it wasn't an issue for  
13     him.

14          Q.     And was that reason because Mr. Garza was  
15     previously a Los Carnales?

16          A.     Yes. He had dual membership in the SNM and  
17     the Los Carnales gang.

18          Q.     Now, in regard to the timing of the Edward  
19     Troup statement that you were asked about, did you  
20     rely on the offender location history for that, or  
21     how do you recall that?

22          A.     I just remember as soon as he and his  
23     co-defendant were returned to the Level 6, shortly  
24     after that we were all in the yard and we had a  
25     conversation. The three of us were out there

1 together.

2 Q. And did you know what the purpose of them  
3 returning to Level 6 was?

4 A. Oh, yeah. Everybody knew. Everybody,  
5 meaning all of us, knew what was up, what was going  
6 on.

7 Q. And was that related to the Freddie Sanchez  
8 murder?

9 A. Yes, ma'am.

10 MS. ARMIJO: All right. Thank you. No  
11 further questions.

12 THE COURT: Thank you, Ms. Armijo.

13 Mr. Castle, do you have redirect of Mr.  
14 Munoz?

15 MR. CASTLE: Yes.

16 THE COURT: Mr. Castle.

17 REDIRECT EXAMINATION

18 BY MR. CASTLE:

19 Q. Mr. Munoz, you were just talking to Ms.  
20 Armijo about a conversation you had with Billy Garcia  
21 at PNM?

22 A. Yes.

23 Q. Where did that occur at PNM?

24 A. Housing unit 3-B.

25 Q. And you were both living in the same unit?

1 A. Yes.

2 Q. Was it in a common area?

3 A. Yes, outside and in the pod; we were very  
4 close.

5 Q. Okay. And it sounds like you were part of  
6 the decision-making to kill Mr. Garza; is that right?

7 A. I was certainly asking for it.

8 Q. Okay. But were you just passing on orders  
9 from someone else, or were you part of the -- were  
10 you the one that was making --

11 A. I was advocating for a set of rules that  
12 existed from the very beginning of the SNM that if  
13 somebody was a rival gang member, he had to be  
14 targeted. Rolando Garza was a known member of the LC  
15 gang for years and he was protected. I knew that  
16 when your client was going there, he had enough  
17 authority and wherewithal to make sure that it  
18 happened, and I relied on my friendship with him and  
19 asked him to take care of it, and he said he would.

20 Q. So it was your idea?

21 A. It was the SNM's idea.

22 Q. Okay. But no one told you to tell  
23 Mr. Garcia to do that?

24 A. There were, I would say, a consensus of  
25 brothers, SNM members, who wanted Rolando Garza taken

1 out, yes.

2 Q. Who were those brothers that had that  
3 consensus?

4 A. Anybody who was a serious member of the SNM  
5 Gang.

6 Q. So you said this happened in a common area  
7 at the facility?

8 A. Yes.

9 Q. Was anyone else present when you told  
10 Mr. Garcia these --

11 A. There were conversations that we had in the  
12 yard.

13 Q. And how soon after that did Mr. Garcia  
14 leave the facility and go to Southern?

15 A. I would say around a month or so.

16 Q. So everyone knew that Mr. Garcia was going  
17 to be moved to another facility a month before he  
18 moved?

19 A. Oh, yes.

20 Q. And were those orders to kill Mr. Garza --  
21 were those given to anyone else?

22 A. Not that I'm aware of.

23 Q. How about Jake Armijo?

24 A. I don't know, sir.

25 Q. It sounds like what you're talking about is

1 that a number of people wanted Mr. Garza dead; is  
2 that right?

3 A. Yes.

4 Q. And Mr. Garza -- is this a number of people  
5 at PNM North?

6 MS. ARMIJO: Your Honor, I'll object as far  
7 as -- we're past the statement itself, and this is  
8 now a fishing expedition.

9 THE COURT: How do you tie this to the  
10 statements that I've got to review?

11 MR. CASTLE: Your Honor, I can honestly say  
12 I can't, but I didn't open up this door. The  
13 Government did. I didn't even challenge the  
14 statement that Mr. Garcia made at PNM. The  
15 Government decided to put that at issue. I'm not  
16 sure why, but they did.

17 THE COURT: Well, let's bring it to a  
18 conclusion. I'm not sure what I'm going to do with  
19 the information, but at the present time I don't see  
20 what the relevance is, so I'll sustain.

21 BY MR. CASTLE:

22 Q. What were the exact words you said and what  
23 were the exact words that Mr. Garcia said?

24 A. I asked him if he would take care of  
25 Looney, take him out, and he said he would take care

1 of it.

2 Q. That was the end of it?

3 A. They were euphemisms for killing him and  
4 he'll get it done, yes.

5 Q. I'm sorry, "taking care of it" is a  
6 euphemism for killing someone?

7 A. Yes.

8 Q. But that wasn't the words you said. You  
9 said, "Will you take care of it," and he said he  
10 would?

11 A. Yes.

12 Q. Was that the last time you discussed the  
13 murder of Mr. Garza with Mr. Billy Garcia?

14 A. We spent some time after the fact. He got  
15 returned to the Level 6. Not explicitly, but it was  
16 an implicit understanding that, good job, I had a lot  
17 of love and respect for him for that.

18 MR. CASTLE: Thank you.

19 THE COURT: Thank you, Mr. Castle.

20 Mr. Burke, do you have anything?

21 MR. BURKE: No, Your Honor.

22 THE COURT: Do any of the other defendants  
23 have any redirect of Mr. Munoz?

24 All right, Mr. Munoz, you may step down.

25 Any reason Mr. Munoz cannot be excused, Mr.

1 Castle?

2 MR. CASTLE: No objection, Your Honor.

3 THE COURT: Any objection from the

4 Government?

5 MS. ARMIJO: No, Your Honor. Thank you.

6 THE COURT: Anyone else? Mr. Burke?

7 Anybody?

8 All right. Have a good day, sir. You're  
9 excused from the proceedings. Thank you for your  
10 testimony.

11 MR. LOPEZ: Your Honor, may counsel be  
12 excused?

13 THE COURT: You may.

14 All right. Do you have your next witness  
15 or evidence that you need to put on, Mr. Castle, Mr.  
16 Cooper?

17 MR. COOPER: Judge, we call Robert  
18 Martinez.

19 MS. ARMIJO: And Your Honor, while we're  
20 waiting, can we get a proffer as to what they're  
21 calling Mr. Martinez for? Which motion?

22 THE COURT: Let me get the entry of counsel  
23 first.

24 MR. McELHINNEY: C.J McElhinney on behalf  
25 of Robert Martinez.

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1 THE COURT: Mr. Cooper, do you want to  
2 indicate what the purpose of Mr. Martinez is and what  
3 I should be looking and listening for?

4 MR. COOPER: Yes, Your Honor. This goes to  
5 our motion for statements document 1909.

6 THE COURT: All right. Do you have a  
7 specific statement?

8 MR. COOPER: I do, Judge. On May 15, 2015,  
9 he was debriefed by Bryan Acee and Mark Myers, and I  
10 wanted to talk to him about that debriefing and the  
11 statements he made.

12 MS. ARMIJO: This is a supplement? I mean,  
13 an exhibit, a specific exhibit?

14 MR. COOPER: No.

15 MS. ARMIJO: Then, Your Honor, we would  
16 oppose, because it's not even really tied. If it  
17 wasn't an exhibit or specifically listed in their  
18 motion as a statement, this clearly seems like a  
19 fishing expedition to just talk to him about his  
20 debrief.

21 THE COURT: Is this a specific statement in  
22 1909?

23 MR. COOPER: May it please the Court.  
24 Judge, we failed to include this statement in our  
25 motion and have not submitted an exhibit, so we will

1 withdraw our request to have Mr. Martinez testify  
2 with regard to this motion.

3 THE COURT: Okay. All right. So what is  
4 your next witness you need to get on today?

5 MR. COOPER: Good question. May we have a  
6 moment?

7 THE COURT: You may.

8 MR. McELHINNEY: Your Honor, may I be  
9 excused?

10 THE COURT: Yes, you can. Thank you, Mr.  
11 McElhinney, for your assistance.

12 MR. COOPER: May it please the Court?

13 THE COURT: You may.

14 MR. COOPER: Judge, we had two witnesses  
15 that had just left for lunch, but we've contacted  
16 them and they're on their way back.

17 THE COURT: The witnesses are not in  
18 custody?

19 MR. COOPER: No, sir, they're law  
20 enforcement types.

21 THE COURT: All right.

22 MR. COOPER: And they just notified us that  
23 they are turning around and coming back.

24 THE COURT: Okay.

25 MR. BECK: Your Honor, I'll just point out

1 to the Court for the record that I think Mr. Munoz's  
2 testimony that inmates in the same housing unit but  
3 in different pods go to rec together, that's where he  
4 had the conversation he just testified. I think that  
5 evidence for the 1909 hearing is probative of  
6 Mr. Garcia's testimony and Exhibits 5 and 6 from Mr.  
7 Jameson Garcia's testimony in the 1909 hearing a  
8 minute ago.

9 THE COURT: I'm not tracking. Tell me what  
10 you're doing? Oh, you want to admit 5 and 6?

11 MR. BECK: Exhibits 5 and 6 are admitted.  
12 I just thought while we had a minute, I would point  
13 out that Mr. Munoz' testimony that he had a  
14 conversation with an inmate in the yard at the North  
15 when they were in the same housing unit but in  
16 different pods is probative of Exhibits 5 and 6.

17 THE COURT: As to Garcia.

18 MR. BECK: As to Garcia and Mr. Troup.

19 THE COURT: Well, let me ask this. That  
20 brings up an issue about how we're doing motions. In  
21 all these 104s, are we taking -- I guess we don't  
22 have any more 104s; right? We're just going to have  
23 the one now, and that was with Mr. Garcia. So the  
24 next two witnesses go to the motions to dismiss?

25 MR. CASTLE: Yeah, it goes to the motion to

1 dismiss. But there are other 104s. I think it's  
2 Quintana. It might just be Mr. Quintana. Oh,  
3 Mr. Leroy Lucero. His lawyer is coming back at 1:00,  
4 Mr. Fallick.

5 THE COURT: Mr. Fallick indicated to  
6 somebody -- it might have been Ms. Wild, it might  
7 have been Ms. Bevel -- that he wanted to redact some  
8 portions of the transcript. Does anybody know where  
9 that stands? I never saw any further redaction.

10 MR. CASTLE: I told Mr. Fallick that I  
11 didn't have any problem with personal identifying  
12 information being redacted, but I wasn't speaking on  
13 behalf of all defendants. It was just on a phone  
14 call with him last night. He has prepared a redacted  
15 transcript if the Court grants his request.

16 THE COURT: Are y'all comfortable with  
17 that?

18 MR. CASTLE: I am, Your Honor.

19 THE COURT: Has anyone seen it? Is it here  
20 so we can redact it and get it in your hands? Y'all  
21 might give a call to Mr. Fallick if he can tell  
22 somebody, the Government, since they were at both  
23 hearings, or if he can orally or send us an email or  
24 something -- I don't know where he is right at the  
25 moment -- so we can make a redaction and get you a

1 copy, so you can look at it before he testifies.

2 MR. CASTLE: I think he has a copy of a  
3 redacted one. I think he emailed it to me. I  
4 haven't opened it.

5 THE COURT: If you're comfortable with  
6 that, then that will be fine with me. I just didn't  
7 know if he was taking out a few words or taking out  
8 pages, but if you're comfortable with it, I'll be  
9 comfortable with it.

10 MR. CASTLE: I would prefer to wait until  
11 he makes his record, because there have been a number  
12 of emails asking us not to open it, and things like  
13 that.

14 THE COURT: We just don't have anything  
15 back from him after he said he was going to redact  
16 it.

17 Mr. Burke, do you have something?

18 MR. BURKE: I think I would be remiss in  
19 not responding to Mr. Beck's remarks. The fact that  
20 there may have been a situation which we dispute with  
21 regard to Frederico Munoz in 2007 regarding whether  
22 inmates in one pod went to rec at the same time as an  
23 inmate at another time, whether that's applicable to  
24 the James Daffy Garcia situation, I would debate that  
25 and ask that it not be considered as further

1       corroboration.

2               THE COURT:   Thank you, Mr. Burke.

3               MR. BURKE:   Thank you, Your Honor.   Your  
4   Honor, the next two witnesses are state police  
5   officers who did some investigation of the 2001  
6   homicides, and this will go to the motion to dismiss,  
7   just to show there was a continuity of investigation  
8   and interplay between the feds and the State.

9               THE COURT:   Do you have their names?

10              MR. BURKE:   Yes, it's Felipe Gonzalez and  
11   Norman Rhoades.   And to some extent, their testimony  
12   will overlap, except that Mr. Gonzales was focusing  
13   on Rolando Garza and Norman Rhoades was focusing on  
14   Mr. Castillo.

15              THE COURT:   Mr. Rhoades, if you'll come up  
16   and stand next to the witness box on my right, your  
17   left, before you're seated, my courtroom deputy, Ms.  
18   Bevel, will swear you in.

19                      NORMAN RHOADES,  
20       after having been first duly sworn under oath,  
21       was questioned, and testified as follows:

22              THE CLERK:   If you'll state your name and  
23   spell your last name for the record.

24              THE WITNESS:   Norman Rhoades.  
25       R-H-O-A-D-E-S.

1 THE COURT: Mr. Rhoades. Mr. Burke.

2 DIRECT EXAMINATION

3 BY MR. BURKE:

4 Q. Mr. Rhoades, how are you employed?

5 A. I'm employed with the -- as a investigator  
6 with the New Mexico State Police.

7 Q. How long have you been an investigator with  
8 the State Police?

9 A. I went into investigations in around  
10 February of 1999.

11 Q. And prior to February of 1999, had you had  
12 other positions with the State Police?

13 A. Yes.

14 Q. Would you tell us what they were?

15 A. I came on as a commissioned state police  
16 officer in 1980, and from 1980 to 1999 I was on  
17 patrol.

18 Q. And so that would make it 38 years?

19 A. Coming on to it, yes, sir.

20 Q. And as an investigator 19 -- is that what  
21 it is?

22 A. Yes, sir. And since 2005 I've been  
23 assigned to the full-time crime scene unit.

24 Q. Okay, I actually recognize you're a bit of  
25 a historical person in this case, because you

1 investigated Javier Molina and Freddie Sanchez, as  
2 well as the Castillo and Garza homicides, did you  
3 not?

4 A. Yes, sir.

5 Q. I'm going to ask you just a few questions  
6 about Castillo and Garza. Would you tell us your  
7 role in those homicides?

8 A. The Castillo investigation, I was assigned  
9 as a lead investigator on that. Agent Gonzalez at  
10 the time was assigned to Garza, so we assisted each  
11 other, you know, where we could.

12 Q. And because you were working with Agent  
13 Gonzalez, did you meet with him occasionally to see  
14 how he was doing on his investigation, so that you  
15 would work together?

16 A. Yes, sir.

17 Q. And just generally speaking, by way of  
18 narrative, tell us what you did in order to  
19 investigate those homicides and the Castillo homicide  
20 in particular.

21 A. Of course, after arriving to the  
22 correctional facility, we met with the correctional  
23 officers, and there were several of them. Assistant  
24 wardens and wardens, what have you, and just gathered  
25 some intel information as to, in my case, who was



1 assigned to the G-1 green pod where Frank Castillo  
2 was housed. And then we conducted some interviews of  
3 the inmates assigned to that, plus the correctional  
4 officers that were assigned to that pod during the  
5 time of the death of Mr. Castillo. And a lot of it  
6 was just getting evidence, submitting it to the lab  
7 and things like that.

8 Q. So you wanted to interview both the inmates  
9 and the correctional officers who might have  
10 information relating to the homicide? Is that a fair  
11 statement?

12 A. Yes, sir.

13 Q. And did you focus primarily on the day of  
14 the homicide, or would you go back in time to take a  
15 look at what other information might have been  
16 available leading up to the homicide?

17 A. I pretty much was focusing on that date. I  
18 didn't have really any knowledge prior to responding  
19 out there of any of the involved parties, if you  
20 will, or any of the history of the inmates or how  
21 even the corrections facility was ran, so...

22 Q. And how do you go about gathering that  
23 information?

24 A. That comes from the correctional staff.

25 Q. Okay. And do you look at any records, as

1 well, to gather information?

2 A. Yes, sir.

3 Q. What kinds of records do you look at?

4 A. What I obtained were the logs where  
5 primarily correctional officers checked in and  
6 checked out during the time of the death and a little  
7 before. Any reports that any of the correctional  
8 officers may have written and any copies or  
9 transcripts of statements of interviews.

10 Q. Okay, do you look for -- I think it was  
11 called the STG back then. Do you look for phone  
12 calls or mail or any of those sorts of things?

13 A. They -- I think the correctional officers,  
14 probably the STG guys, were obtaining that and going  
15 through that. They had access to it. If there was  
16 anything pertinent, then they would call me and we  
17 would meet on it.

18 Q. Thank you, sir. I now want to jump to the  
19 physical evidence. Was there any physical evidence  
20 that helped you perhaps even solve the Castillo  
21 homicide?

22 A. I believe there was, yes.

23 Q. Would you tell the Court what that was?

24 A. Yes, sir. It was -- Castillo had a  
25 ligature, looked like part of the laundry bag, maybe

1 the -- and the cord that tied it up tied around his  
2 neck, and that was submitted to the lab and they came  
3 back for DNA testing, and it came back with the  
4 results of DNA from Frank Castillo and Angel DeLeon.

5 Q. And as a result of that, did you submit an  
6 affidavit for the arrest of Mr. DeLeon?

7 A. Yes, I did.

8 Q. And did you seek the prosecution of  
9 Mr. DeLeon from the district attorney?

10 A. Yes, I did.

11 Q. And what happened to your request?

12 A. They took it under review and several  
13 months later sent the decline to prosecute letter.

14 Q. And you continued to investigate the case  
15 for some time notwithstanding the declination; is  
16 that a fair statement?

17 A. It was kind of -- after that, it was kind  
18 of dead in the water as far as my part goes. Just  
19 waiting for the information until 2003. The criminal  
20 investigation sergeant then reassigned it to another  
21 agent.

22 Q. Let me ask you to look at Exhibit D. If  
23 you'll look at that, Agent Rhoades, is that the  
24 reassignment to Agent Venegas?

25 A. Yes, it is.

1 Q. And one of the reasons it was being  
2 reassigned to Agent Venegas is that he was part of  
3 the FBI Gang Task Force; is that a fair statement?

4 A. Yes, sir.

5 Q. And let me jump forward to 2007. There was  
6 another piece of evidence in the case because Mr.  
7 Lujan decided to talk to law enforcement authorities.  
8 Is that a fair statement?

9 A. Yes, sir.

10 Q. And you got involved in the interviews of  
11 Mr. Lujan; is that a fair statement?

12 A. Yes, sir.

13 Q. Would you tell us about that? How you got  
14 reinvolved at that point?

15 A. This case had been reassigned from Agent  
16 Venegas, then went to Agent Christiansen, and I'm not  
17 sure where it went, who else had involvement in it.  
18 But it was pretty much idle, and I had worked prior  
19 with an Albuquerque police detective, Rich Lewis, on  
20 other cases, so we had a network going. He contacted  
21 me and knew that I was involved in this case  
22 originally, and told me about an interview he had had  
23 with Lujan. He offered to set up an appointment to  
24 where myself and Agent Gonzalez could go up and  
25 interview him, since we had a lot of information on

1 both these cases, so we did.

2 Q. So at this point, you're coordinating with  
3 other law enforcement people, and you did, in fact,  
4 get an opportunity to interview Mr. Lujan; is that  
5 true?

6 A. Yes.

7 Q. And when was that? I notice that you did  
8 bring your binder, so you boned up a little bit.  
9 Tell us a little bit about that, please.

10 A. I forgot the month now. It was, I believe,  
11 2007, mid to late part of the year, maybe, and it was  
12 set up in Albuquerque, I believe at the DA's office  
13 up there. And we went and met with Lujan and  
14 conducted that interview.

15 Q. Okay. And so that breathed new life into  
16 the investigation. Is that a fair statement?

17 A. Yes, I believe that did.

18 Q. All right. Now, I'd like you to take a  
19 look at Exhibit U. Agent, my guess is you will  
20 recognize this as a concluding page of a long  
21 PowerPoint that had been prepared.

22 A. Yes, sir.

23 Q. Tell us about the PowerPoint, then I'll be  
24 asking you a couple of questions about this  
25 particular exhibit. What happened when you guys got

1 back to work and you developed a PowerPoint? Why  
2 don't you tell us what you were doing.

3 A. The PowerPoint kind of helped to simplify  
4 the case. It was kind of fragmented, I felt, and  
5 scattered out, and I thought a way to visually  
6 present it would be through a PowerPoint format. So  
7 I went through and gathered pretty much the high  
8 spots of the investigation, and tried to keep it in  
9 chronological order as to the investigation. So  
10 that's why the PowerPoint was created.

11 Q. And what sorts of things were in the  
12 PowerPoint? And I understand you just gave us an  
13 abbreviated synopsis, but did it have some physical  
14 evidence, photographs?

15 A. Yes, it did. It had some of the crime  
16 scene photographs; I think the photograph of the  
17 ligature was in there, if I remember correctly. I  
18 don't think I put a copy of the lab report in there.  
19 But I think I had referred to it.

20 Q. Yes. And then so what was the conclusion  
21 of the PowerPoint and that phase of the  
22 investigation, referring now to Exhibit U?

23 A. We had met with the district attorney at  
24 that time at their office with the new information  
25 coupled with the DNA I had at least on the Castillo

1 case to see if they would now file charges, realizing  
2 that Angel DeLeon had been released.

3 At that time, they requested that we go  
4 reinterview everybody. At some point in there, the  
5 FBI was thinking about taking it and ultimately did  
6 take the case over, several of the cases, so...

7 Q. So they had grouped together some other  
8 homicides and the FBI took over the case?

9 A. Yes.

10 MR. BURKE: Those are all my questions,  
11 Your Honor.

12 THE COURT: Thank you, Mr. Burke.

13 Mr. Castle, do you have direct examination  
14 of Mr. Rhoades?

15 MR. CASTLE: I do, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. CASTLE:

18 Q. Could we pull up Exhibit D? I guess it's  
19 still good morning.

20 A. Good morning.

21 Q. Exhibit D was shown to you a few minutes  
22 ago. Is that an email from -- is it Steven Libicer?

23 A. Libicer.

24 Q. That's to you and to Felipe Gonzalez; is  
25 that right?

1 A. Yes.

2 Q. And the first part of it indicates that "I  
3 realize you've been carrying these cases on an  
4 inactive basis for some time, since the AUSA's office  
5 has apparently shelved them."

6 And it's dated April 28, 2003. So had  
7 there been an attempt prior to that to see if the  
8 United States Attorney's Office would take over  
9 perhaps the prosecution of these cases?

10 A. To my understanding of this email, prior to  
11 that, I don't recall. Maybe there was talk. I don't  
12 recall. But we had the investigations. I had -- I  
13 was still assigned to Castillo and I still at this  
14 point was waiting. I had been meeting with  
15 Corrections and they had an official intel, but  
16 nothing they could release to me. So I was kind of  
17 waiting to see if that would get resolved out to  
18 where it would be useful.

19 So at that time I was still -- the case was  
20 inactive, but I was still active with it.

21 Q. What was the United States Attorney's  
22 Office involved in prior to this email?

23 A. I don't know if they were just reviewing  
24 it. I don't remember even being aware of anything  
25 specific about it.



1 Q. Over the years, as different violent acts  
2 occurred at the prison by suspected SNM members, was  
3 there debate about whether the federal government  
4 ought to take it over versus the State prosecuting?

5 A. During each time of the investigation, not  
6 that I recall, no.

7 Q. Would you work with the Southern New Mexico  
8 Gang Task Force to exchange information and perhaps  
9 even informant information concerning these murder  
10 investigations through the years?

11 A. Only on the Castillo investigation, because  
12 I was assigned as a lead on the subsequent ones, and  
13 at that time I was doing crime scenes, so my  
14 involvement would be limited to just that.

15 Q. So with regards to the Castillo  
16 investigation, would you have shared information with  
17 the task force and vice versa in 2001 and thereafter?

18 A. Yes, sir.

19 Q. If we can move to Exhibit F. Do you  
20 recognize what this document is or at least the  
21 format?

22 A. This is going to be the cover sheet on our  
23 reports, and this one is going to be by Agent Bobby  
24 Duncan.

25 Q. And it was provided to you as the case

1 agent -- or the agent, I'm sorry, as an agent?

2 A. Yes, sir.

3 Q. And if we could go to the next page.

4 THE COURT: Let me ask you, Mr. Castle.  
5 Let's do a little planning here. We can do a couple  
6 of things. I do need to give Ms. Bean a break, so if  
7 we wanted to take a 15-minute break, come back,  
8 finish up, get these guys out of here. If you want  
9 to take a full lunch break, we can do that and come  
10 back. What's your preference?

11 (A discussion was held off the record.)

12 MR. CASTLE: Sounds like there's going to  
13 be quite a few questions left for this agent. So  
14 maybe we should take the lunch break. I know that --  
15 yes, I think that makes sense.

16 THE COURT: Do you want to ask Mr. Burke?  
17 He might have a different view.

18 MR. BURKE: I do have a different view. I  
19 wanted to get Felipe Gonzalez on and off, but it  
20 really does depend. If you're going to go a bit --

21 MR. BECK: I don't think I'm going to go  
22 long with Mr. Rhoades. I'd be inclined -- they  
23 already left and had to come back once. I'd be  
24 inclined to just take a later lunch and work through.

25 THE COURT: Is that all right with

1 everyone? So we'll take a 15-minute break, come  
2 back, and try to get you guys out of here.

3 All right. So we'll be in recess about 15  
4 minutes.

5 (The Court stood in recess.)

6 THE COURT: All right. I think everybody  
7 has got an attorney. All the defendants are back in.

8 So Mr. Rhoades, I'll remind you that you're  
9 still under oath. And Mr. Castle, if you wish to  
10 continue your direct examination of Mr. Rhoades, you  
11 may do so at this time.

12 BY MR. CASTLE:

13 Q. I think when we left, Agent Rhoades, we  
14 were on Exhibit F -- or is this Exhibit F? On page  
15 2. Actually if we could scroll to page 3. I want  
16 you to look at the fourth paragraph down, if we  
17 could. There is an indication here that the crime  
18 scene was documented with a 35-millimeter camera and  
19 that also an Agent LaCuesta videotaped the scene. Do  
20 you see that?

21 A. Yes.

22 Q. Was Agent LaCuesta a crime scene detective?

23 A. Yes.

24 Q. And do you recall that he had videotaped  
25 the scene?

1           A.    No, I don't recall being present when they  
2           were processing the scene. I think I was doing  
3           interviews or something at that time.

4           Q.    When the file was turned over to the FBI,  
5           was it just the paper file, or did they get other  
6           items, like photographs and videotapes and things of  
7           that nature?

8           A.    I believe they got copies of all of the  
9           photographs and videotapes and stuff. I know we kept  
10          the collected evidence, physical evidence.

11          Q.    Okay. So if it was collected as physical  
12          evidence, you maintained it as a custodian at  
13          whatever part of the state patrol that keeps those  
14          things; right?

15          A.    Yes, sir.

16               MR. CASTLE: I have no other questions.

17               THE COURT: Thank you, Mr. Castle.

18               Do any other defendant have direct  
19          examination of Mr. Rhoades? Mr. Solis.

20               MR. SOLIS: I do, Your Honor, very briefly.

21                               DIRECT EXAMINATION

22          BY MR. SOLIS:

23          Q.    Mr. Rhoades, I know Felipe Gonzalez is  
24          outside the door, so I'll be very brief. But you did  
25          mention that you were the assigned case agent to the

1 Castillo murder; right?

2 A. Yes.

3 Q. And I think you said that Mr. Felipe  
4 Gonzalez was the Garza murder?

5 A. Yes.

6 Q. But nonetheless, you coordinated the  
7 investigations somewhat?

8 A. We exchanged information and talked about  
9 it and assisted, maybe sitting in on interviews or  
10 whatever.

11 Q. And you and he were aware of the progress  
12 of your respective investigations?

13 A. Yes, sir.

14 Q. Okay. So that's my focus, then. Being  
15 coordinated and aware of the respective  
16 investigations, do you know -- a follow-on to a  
17 question asked of you a little while ago -- do you  
18 know if there was any physical evidence that helped  
19 solve or at least advance the Garza murder?

20 A. Not to my knowledge, no.

21 Q. Had there been, you would have been aware  
22 of it, obviously; right?

23 A. Yes, sir.

24 Q. And I think you said since 2001 and  
25 certainly since 2003, for lack of a better word, the

1 Castillo investigation was cold; that is, it was  
2 shelved; it was just not advancing or going anywhere.  
3 Is that pretty much accurate?

4 A. Yes, sir.

5 Q. Up until, I think you said, 2007 when Mr.  
6 Lujan started reaching out and talking; is that  
7 right?

8 A. Yes, sir.

9 Q. Does that go for the Garza murder, to your  
10 knowledge?

11 A. Yes, sir.

12 Q. So both investigations were pretty much, to  
13 use your words, idle up until 2007, when Mr. Lujan  
14 was made available as a witness?

15 A. Yes, sir.

16 Q. And just to conclude on the photos and  
17 video of the Castillo scene, was the same procedure  
18 done on the Garza scene? That is, was it somehow  
19 documented with photographs or 35-millimeter video?

20 A. Yes, sir.

21 Q. That was done?

22 A. I'm not -- I know photographs were. I'm  
23 not sure about the crime scene video.

24 MR. SOLIS: Thank you, sir. Nothing  
25 further.

1 THE COURT: Thank you, Mr. Solis.

2 Any other defendant?

3 Mr. Beck, do you have cross-examination of  
4 Mr. Rhoades?

5 MR. BECK: Yes, Your Honor.

6 THE COURT: Mr. Beck.

7 CROSS-EXAMINATION

8 BY MR. BECK:

9 Q. Good afternoon, Agent Rhoades.

10 A. Good afternoon.

11 Q. I want to take you back to Exhibit F, which  
12 was the supplemental police report for your  
13 investigation into Frank Castillo.

14 So this is the supplemental report that you  
15 were shown earlier. It's Defendants' Exhibit F and  
16 it says that a copy was sent to you, Agent Rhoades.  
17 Do you remember seeing the video that this report  
18 says that Agent LaCuesta took?

19 A. No, I don't.

20 Q. And I think you said that copies -- at  
21 least copies of photographs were given over to the  
22 FBI; right?

23 A. To my knowledge, yes. I know on the  
24 Castillo case, I did.

25 Q. And in 2001 when this report was written --

1 let me see. There we go. Just finding the date, so  
2 we're on the same page. It looks like -- was this  
3 report written on 5/3/2001?

4 A. Yes, sir.

5 Q. At that time, this was a State Police  
6 investigation; right?

7 A. Yes.

8 Q. And there were no FBI agents joining the  
9 investigation with you at that time?

10 A. No.

11 Q. When you provided copies of the photographs  
12 to -- I think you said you provided those to the  
13 federal authorities, I'm guessing the FBI, at some  
14 point?

15 A. Yes, and I don't recall who it was at that  
16 time, but --

17 Q. Okay. And I guess my question was: What  
18 time are we talking about? When did you provide  
19 these photographs to the FBI?

20 A. I don't remember, actually, and I don't  
21 know if I even documented it.

22 Q. Sure. You provided the photographs to the  
23 FBI sometime around 2015; right?

24 A. That could be, yes.

25 Q. And so I guess that's another couple



1 questions I have here. Did you ever testify before a  
2 federal grand jury in connection with your  
3 investigation of the Castillo murder?

4 A. Yes, I did.

5 Q. And when was that?

6 A. It was twice, actually. One time in  
7 Albuquerque, and one time here in Las Cruces. And  
8 again, I don't recall the time or the date of it.

9 Q. Okay. And those -- the times that you  
10 testified, was that within, let's say, sometime after  
11 2014?

12 A. I believe it was, yes.

13 Q. All right. And the first time that you  
14 testified in Federal Court in relation to, let's say,  
15 your investigation into any SNM crimes, was that in  
16 the last month or two here in Las Cruces?

17 A. Yes, it was.

18 Q. And if you know, was your testimony in  
19 front of the federal grand jury part of this case  
20 that we're sitting here today for?

21 A. Yes.

22 Q. I think you said with Mr. Solis -- and  
23 sorry, I'm kind of working backwards here; it's a  
24 little bit fresher -- that there was no physical --  
25 or at least you weren't aware of any physical

1 evidence to advance the Garza murder; is that right?

2 A. That's correct.

3 Q. And in prosecuting -- well, I guess you  
4 wouldn't be prosecuting. In investigating crimes,  
5 including murders, in your experience, if they're  
6 adopted for prosecution by either the district  
7 attorney's office or the U.S. Attorney's Office, is  
8 physical evidence an important aspect in the  
9 investigation?

10 A. It could be. Usually it is important.

11 Q. And with Mr. Burke, he asked you about the  
12 Corrections Department monitoring phone calls and  
13 mail after the Castillo murder. Do you remember  
14 that?

15 A. Yes, I do.

16 Q. And I think you said that the Corrections  
17 Department or STG or STIU would call you if they  
18 found anything pertinent. Do you remember that?

19 A. Yes.

20 Q. Did they call you?

21 A. I don't recall them calling me relating to  
22 phone messages or mail. They did call with  
23 information, verbal intelligence, that they had  
24 received; and we met on that.

25 Q. I'm going to show you what's been admitted

1 as Exhibit D. And do you remember going over this  
2 email on your direct examination from 2003?

3 A. Yes, sir.

4 Q. All right. In that first sentence, does it  
5 say that these cases have been on an active basis for  
6 some time since the AUSA's office has apparently  
7 shelved them?

8 A. Yes.

9 Q. And do you know if the AUSA's office  
10 shelved them?

11 A. No, I don't.

12 Q. And I'm guessing, then, you don't know why  
13 the AUSA's office shelved them, if they did?

14 A. No, I don't.

15 Q. And in that second paragraph, the second  
16 sentence there, and it's referring to Agent Venegas,  
17 it says, "He will be in a better position to try and  
18 develop some prison gang leads and/or deal with the  
19 AUSA's office on them."

20 Did I read that right?

21 A. Yes, sir.

22 Q. So does that mean -- does that indicate to  
23 you that at this time, according to Steven Libicer,  
24 at least, he thought that they had not been in a good  
25 position with leads to present it to the AUSA's

1 office?

2 A. It kind of left an indication that the  
3 federal agents, FBI, had been working it and there  
4 had been something submitted to the AUSA's office.

5 Q. But does it say where he will be -- my  
6 question is: Does it say where he will be in a  
7 better position to try and develop some prison gang  
8 leads and/or deal with the AUSA's office on them --  
9 does that indicate to you that he at that point was  
10 not in a good position to deal with the AUSA's  
11 office? Does that indicate to you that at that  
12 point, they had not been in a position to develop  
13 some prison gang leads or deal with the AUSA's  
14 office? I'm just asking your opinion.

15 A. Yes, sir.

16 Q. And you talked about -- I think it was a  
17 2008 interview of Mr. Leonard Lujan. Do you remember  
18 that?

19 A. Yes, I do.

20 Q. And you said -- I think you said this a  
21 couple of times, but your words were: These cases  
22 had been idle for some time before that. Were those  
23 your words?

24 A. Could have been. They had been idle.

25 Q. And what do you mean by "the cases had been

1 idle"?

2 A. Really no movement or investigation, to my  
3 knowledge, going on them; pretty much just waiting  
4 for new information.

5 Q. And with Exhibit U, I don't have a copy of  
6 that, but it sounds like that was a PowerPoint that  
7 you helped prepare to -- I think you said it helped  
8 simplify the case. Was that the PowerPoint's idea?

9 A. Yes, sir, and I think I did prepare that  
10 PowerPoint.

11 Q. Okay. And so I think you also said that up  
12 until that point, the case had been scattered and  
13 fragmented. Is that fair to say?

14 A. Yes, sir. In terms of what was assigned to  
15 it, hands it's gone through, the case file went  
16 through some hands, you had various agencies,  
17 Corrections, State Police, conducting interviews  
18 independent, it appears, of each other.

19 Q. Sure. It sounds like at some point during  
20 this period or maybe during another period you had  
21 some involvement with the Southern New Mexico Gang  
22 Task Force; is that right?

23 A. No, I've never been involved with the task  
24 force like that.

25 Q. Okay. I must have misunderstood. I think

1 you were talking with Mr. Castle and he asked you  
2 about that task force. But we'll move on. That's  
3 fine.

4 Did Mr. Lujan tell you that he participated  
5 in the murder of Mr. Castillo or Mr. Garza?

6 A. Not -- not -- how do I word it? Not  
7 physically participated.

8 Q. What did he tell you he'd done?

9 A. That he was told to facilitate the hits.

10 Q. Okay. And in your work in this case, have  
11 you spoken with FBI Agent Bryan Acee?

12 A. Yes.

13 Q. Have you spoken with any other FBI agents  
14 over the years?

15 A. Yes, I have.

16 Q. Do you recall who any of those agents were?

17 A. I recall one of them was Lance Roundy,  
18 maybe, and there were others in the room; and I think  
19 on other occasions. I don't recall or remember what  
20 their names are.

21 Q. Okay. Do you remember, have you ever  
22 spoken with Sonya Chavez about these cases?

23 A. I think she was one of many at a meeting we  
24 had in Albuquerque at their office.

25 Q. So you had a meeting in Albuquerque with a

1 number of FBI agents?

2 A. Yes, and the U.S. Attorney's Office.

3 Q. And the U.S. Attorney's Office was there?

4 A. And I think a representative from the Third  
5 Judicial District Attorney's office was there, as  
6 well.

7 Q. All right. And I probably should have  
8 asked, but in Exhibit U, your PowerPoint, it  
9 indicated that you'd spoken with the Third Judicial  
10 District Attorney's Office and that at that time it  
11 looked like the case was going to be accepted at  
12 least for federal authorities to investigate; right?

13 A. At some point in there, yes, it did.

14 Q. So does that indicate to you that up until  
15 that time, it had been primarily a state  
16 investigation?

17 A. Yes, other than Agent Venegas working with  
18 the FBI Gang Task Force.

19 Q. Sure. And so my question to you is: In  
20 any of these discussions with Special Agent Acee,  
21 with Special Agent Lance Roundy, with any of the  
22 special agents you've met with or with anyone from  
23 the U.S. Attorney's Office, has anyone indicated to  
24 you that it would be -- or have you ever heard that  
25 it would be a good idea to delay prosecution of the

1 Castillo and Garza murders for tactical reasons?

2 A. No.

3 MR. BECK: Nothing further, Your Honor.

4 THE COURT: Thank you, Mr. Beck.

5 All right, Mr. Castle. Do you have any  
6 redirect of Mr. Rhoades?

7 MR. CASTLE: No, Your Honor.

8 MR. BURKE: No, Your Honor.

9 THE COURT: Anybody else?

10 All right. Mr. Rhoades, you may step down.

11 Is there any reason that Mr. Rhoades cannot  
12 be excused from the proceedings? From the  
13 defendants?

14 MR. BURKE: No, Your Honor.

15 MR. CASTLE: No, Your Honor.

16 THE COURT: Any objections, Mr. Beck?

17 MR. BECK: Not from the Government, Your  
18 Honor.

19 THE COURT: You're excused from the  
20 proceedings. Thank you for your testimony.

21 All right, Mr. Burke, do you have Mr.  
22 Gonzales you want to call?

23 MR. BURKE: Yes, Your Honor. Thank you.

24 THE COURT: Mr. Burke.

25 Mr. Gonzalez, if you'll come up and stand



1 next to the witness box on my right, your left,  
2 before you're seated, my courtroom deputy, Ms. Bevel,  
3 will swear you in.

4 FELIPE GONZALEZ,  
5 after having been first duly sworn under oath,  
6 was questioned, and testified as follows:

7 THE CLERK: Please state your name and  
8 spell your last name for the record.

9 THE WITNESS: Felipe Gonzalez,  
10 G-O-N-Z-A-L-E-Z.

11 THE COURT: Mr. Gonzalez. Mr. Burke.

12 DIRECT EXAMINATION

13 BY MR. BURKE:

14 Q. Mr. Gonzales, did you have a career in law  
15 enforcement?

16 A. Yes, sir.

17 Q. Would you please tell us about that?

18 A. I'm a retired state police officer,  
19 investigator, supervisor. I retired in 2013.

20 Q. Tell us about your career. What sorts of  
21 things did you do as a state police officer?

22 A. You know, I did patrol, I did  
23 investigations. All kinds of duties involving law  
24 enforcement. Yes, sir.

25 Q. How many years total was that?

1 A. Just over 20 years.

2 Q. Going back to 2001, what was your position  
3 with the State Police at that time?

4 A. At the time I was assigned as a criminal  
5 agent.

6 Q. And as criminal agent back in 2001, were  
7 you involved in the investigation of two homicides  
8 involving a Mr. Garza and a Mr. Castillo?

9 A. Yes, I was.

10 Q. Would you tell us what you did? And you  
11 can use a narrative at this point.

12 A. It's been a long -- it's been a while. It  
13 was in 2001, I believe it was, we had got a call of a  
14 possible homicides at the penitentiary. And I went  
15 out there, and shortly thereafter, we got information  
16 that there was actually two homicides. And so I got  
17 assigned one of the homicides, which was Rolando  
18 Garza. I believe Agent Rhoades got assigned the  
19 other homicide, which was Mr. Castillo.

20 Q. And what did you do as the lead  
21 investigator from the State Police on the Garza  
22 homicide?

23 A. My role was to interview witnesses, look at  
24 the crime scene, see what we had; but mainly doing  
25 interviews and investigating, talking to the

1       correctional officers, inmates out there at the  
2       facility, going over the crime scene at the time, as  
3       well; and follow-up with investigation on that  
4       particular homicide.

5           Q.     Was the gathering of documents part of your  
6       investigation?

7           A.     Yes, sir.

8           Q.     Tell us what you would do in terms of  
9       gathering documents.

10          A.     Anytime we did interviews, we'd have to  
11       document we were at the scene. Just arriving at the  
12       scene, we would have to document that; you know, the  
13       time, the location who we met with, what we did.  
14       What we did regarding that particular case was all  
15       documented in reports.

16          Q.     Okay. Did there come a time when the level  
17       of activity slowed down because you weren't able to  
18       close the case or solve it?

19          A.     Yes. At some point it becomes, like, an  
20       inactive case with, you know, follow-up if we  
21       determine to be -- get more leads on the case.

22          Q.     All right. Thank you, sir. Let me ask you  
23       to look at Exhibit D and see if you recognize that  
24       email. You are a recipient of it. And see if that  
25       is a document you remember.

1 A. Yes.

2 Q. And so what happened in 2003 with respect  
3 to those two homicides?

4 A. What happened was: I believe we had an  
5 agent -- Albert Venegas was assigned to the FBI task  
6 force, and he was reassigned those cases to -- since  
7 he was going to be working with the FBI and see if he  
8 could develop some more leads.

9 Q. Thank you very much. So the level of your  
10 activity at that point would have slowed down, I take  
11 it, in 2003?

12 A. Correct.

13 Q. Did there come a time in 2007 when you had  
14 some new activity with regard to a Mr. Lujan?

15 A. Yes, I did.

16 Q. Would you tell the Court about that,  
17 please?

18 A. At the time, I was back in patrol here in  
19 Las Cruces, as well. And we had got information  
20 regarding an individual in Albuquerque that had  
21 provided some information to one of the detectives up  
22 in Albuquerque -- I think it was Rich Lewis -- and  
23 had given him information on some other cases, other  
24 homicides up in Albuquerque, and also indicated that  
25 there was information regarding our two possible

1 homicides here in Las Cruces in the 2001 cases.

2 Q. And as a result of that, was there an  
3 increase in activity on the homicides?

4 A. Was there a what, again?

5 Q. An increase in investigative activity as a  
6 result of the interviews with Mr. Lujan.

7 A. Yes. What we did is: We did some more  
8 follow-up. We went up -- I went with Agent Rhoades  
9 to Albuquerque. We met with Mr. Rich Lewis and Mr.  
10 Lujan, and we did pretty much an interview between  
11 all of us and his attorneys, I believe, at the time.

12 Q. All right. I'm going to show you the first  
13 page and last page of a PowerPoint that was developed  
14 by your colleague Agent Rhoades and just see if you  
15 recall that PowerPoint. I believe it's page 543. Do  
16 you remember this PowerPoint to any degree? I know  
17 you weren't the drafter of it, but do you remember?

18 A. Yes.

19 Q. Let me ask you now to turn to Exhibit U,  
20 which is the final page of that PowerPoint, and ask  
21 you to see in the top bullet point you had this  
22 meeting. I think you just referred to it. Do you  
23 recall that meeting?

24 THE COURT: Is U up there? Do you have U,  
25 or is there a U up there on the shelf?

1 THE CLERK: I don't have a U.

2 MR. BURKE: Here you go.

3 THE COURT: I don't want to steal your  
4 copy.

5 MR. BURKE: Oh, I know what's on it.

6 MR. BECK: We should probably move that  
7 into evidence. The United States doesn't object to  
8 that.

9 MR. BURKE: Thank you. I actually thought  
10 I had already done that.

11 THE COURT: Any objection? Not hearing  
12 any, Defendants' Exhibit U will be admitted into  
13 evidence.

14 (Defendants' Exhibit U admitted.)

15 MR. BURKE: Thank you, Your Honor.

16 BY MR. BURKE:

17 Q. And so this was a good meeting with a  
18 number of people up there actually in the DA's  
19 office?

20 A. That's correct.

21 Q. All right. And then did you relinquish  
22 control of the investigation to the FBI Agents  
23 Monarko and Chavez?

24 A. Yes, we did.

25 MR. BURKE: Thank you. Those are my

1 questions.

2 THE COURT: Thank you, Mr. Burke.

3 Any other defendant? Mr. Solis?

4 MR. SOLIS: Thank you, Your Honor.

5 THE COURT: Mr. Solis.

6 DIRECT EXAMINATION

7 BY MR. SOLIS:

8 Q. Mr. Gonzalez, good morning.

9 A. Good morning.

10 Q. So -- you'll have to -- well, I'm rather  
11 new to the case so I neglected to ask -- or maybe I  
12 just hadn't looked into -- Mr. Rhoades -- he was your  
13 counterpart or your colleague in the investigation.  
14 What is his agency back then? What was the agency he  
15 was working for?

16 A. He's always been a state police officer, as  
17 well.

18 Q. So you and he have similar training, I  
19 guess.

20 A. Yes, sir. He's got a lot more training  
21 because he's been on the department a lot longer.

22 Q. Right. And some of that training involved  
23 basic Law Enforcement Academy stuff?

24 A. Right.

25 Q. And on-the-job training.

1 A. Right.

2 Q. And periodic seminar training along that  
3 career?

4 A. Right. Criminal investigations techniques  
5 and interrogation. Yes, sir.

6 Q. And some of that involves knowing how to  
7 preserve a scene?

8 A. Yes.

9 Q. And memorialize evidence; right?

10 A. Yes, sir.

11 Q. And you would rather do that close in time  
12 to the event; is that right?

13 A. That's correct.

14 Q. And you'd rather obtain statements close in  
15 time to the event; is that right?

16 A. Correct.

17 Q. And you'd rather memorialize or record  
18 those statements for future use; right?

19 A. Correct.

20 Q. Okay. And there is a reason for wanting to  
21 memorialize or record, preserve evidence close in  
22 time to the event, isn't there?

23 A. Yes.

24 Q. Why is that?

25 A. You get more of an accurate picture of what



1 happened, and everything is fresh in everybody's  
2 mind.

3 Q. And if there's any suspect changes that  
4 come down the pike, then you've got that recorded  
5 already close in time to the event; right?

6 A. Right.

7 Q. Okay. So tell me if you agree with Mr.  
8 Rhoades where he says -- and he might have and Mr.  
9 Burke might have covered it already -- where he says  
10 right around from 2001 and certainly by 2003, up  
11 until the Lujan incident later, this case had  
12 basically gone cold and not much was happening; it  
13 was idle; is that right?

14 A. That's correct. Yes, sir.

15 Q. So up until -- well, when Mr. Burke asked  
16 you about your information on Lujan, your words were  
17 "got active again" were your exact words, was that  
18 about 2007?

19 A. Yes, it was.

20 Q. So prior to 2007, when you compiled,  
21 preserved, gathered, memorialized evidence in '01,  
22 was there any attempt to present the case to the  
23 grand jury on the state side here with Susana  
24 Martinez back then?

25 A. Actually, what I recall is: We did have a

1 meeting with them. I'm trying to remember if it was  
2 before the Lujan or after, as well. I think we might  
3 have done both. I'm sure. However, I don't believe  
4 they wanted to pursue the case at the time.

5 Q. Well, I'll have to press you on that.  
6 Before Lujan, was there an attempt to present it to  
7 the grand jury with Susana Martinez, Third Judicial  
8 District in New Mexico?

9 A. I'm not sure if it was going to be  
10 presented, sir. We just met with the attorneys to  
11 review the cases. Right. Yes, sir.

12 Q. And so your intent was never to present it  
13 to the grand jury if you met with the district  
14 attorney or assistant district attorneys?

15 A. Well, we would be ready. It would just be  
16 a matter of the attorneys wanting to pursue the case,  
17 and looking at all the reports and interviews and  
18 evidence.

19 Q. And that was a big no, I guess; right?  
20 They decided not to pursue indictment?

21 A. That's correct.

22 Q. Mr. Rhoades indicated that he was --  
23 although not the lead investigator in the Garza  
24 murder, like you were, he was certainly aware of your  
25 efforts in that murder because he was kind of

1 coordinating the Castillo murder with your efforts in  
2 the Garza murder. Do you agree with that?

3 A. That's correct.

4 Q. And he indicated to me that as far as he  
5 knew, the Garza murder did not result -- the  
6 investigation did not result in any -- there wasn't  
7 any physical evidence that was located or preserved  
8 to further that investigation for that murder; is  
9 that right?

10 A. That's correct.

11 Q. And having agreed or having related to me  
12 the training that you've had, that you say you were a  
13 participant in over the years, as a good investigator  
14 you'd want more than just witness statements. You'd  
15 want physical evidence; is that right?

16 A. You always want physical evidence.

17 Q. And you'd want reliable witness statements;  
18 is that true?

19 A. That's correct.

20 MR. SOLIS: I'll pass the witness.

21 THE COURT: Thank you, Mr. Solis.

22 Any other defendant have direct examination  
23 of Mr. Gonzales?

24 Mr. Beck, do you have cross-examination of  
25 Mr. Gonzales?

1 MR. BECK: I do, Your Honor.

2 THE COURT: Mr. Beck.

3 CROSS-EXAMINATION

4 BY MR. BECK:

5 Q. Good afternoon, Agent Gonzalez.

6 A. Good afternoon.

7 MR. BECK: Ms. Gilbert, would you bring up  
8 Exhibit U for me, please?

9 Q. Do you remember talking about this exhibit  
10 just a few moments ago?

11 A. Yes, sir.

12 Q. And I think you said that in 2003 the  
13 investigation had slowed down. Do you remember that?

14 A. Yes, sir.

15 Q. And you thought that Agent Venegas, who  
16 was, I guess -- your understanding was, he was on the  
17 task force with FBI agents; is that right?

18 A. That's correct.

19 Q. And let me ask you this first. Did you  
20 produce this PowerPoint?

21 A. No, I believe that was produced by Agent  
22 Rhoades.

23 Q. Did you help him make it?

24 A. I think we shared the information and we  
25 looked at it. I reviewed it at the time, yes, sir.

1 Q. Okay. So based on this, it looks like in  
2 2008, July 30, 2008, that would have been after your  
3 interview with Mr. Lujan; right?

4 A. Yes, sir.

5 Q. And so if -- looking at the second bullet  
6 point, if the Third Judicial District attorney Susana  
7 Martinez and Chief Deputy District Attorney Amy  
8 Orlando advised they would agree to have both  
9 investigations relinquished to the FBI, does that  
10 tell you whether the State was still investigating  
11 and looking at maybe prosecuting these on the State  
12 side, at least before July 30?

13 A. I think we kind of met with them after we  
14 got the interview with Mr. Lujan, and that was the  
15 reasoning to meeting with them again. And I think at  
16 that point, that's when a meeting was -- decided to  
17 meet with the FBI again and pursue that.

18 Q. Did you attend a meeting in Albuquerque  
19 related to -- I think in this time period where there  
20 were FBI agents and assistant U.S. Attorneys talking  
21 about, I guess, this case and other SNM cases. Were  
22 you at that meeting?

23 A. I believe I was at one meeting. I'm not  
24 sure how many or how -- I do remember attending one  
25 meeting, yes, sir.

1 Q. And do you remember the FBI agents who were  
2 there?

3 A. I think the lead on it was a lady by the  
4 name of Sonya. I'm not sure of her last name.

5 Q. Was it Sonya Chavez?

6 A. Yes. Yes, sir.

7 Q. Do you remember anyone else that was there?

8 A. And also Mackenzie. She was also there, as  
9 well.

10 Q. If you remember, were there other FBI  
11 agents there?

12 A. It's hard to say. It's been a while.

13 Q. I'm not testing you.

14 A. I'm sure there was. I'm not too -- I can't  
15 remember, to be honest with you.

16 Q. And are you sure there was, or you just  
17 don't remember?

18 A. I just don't remember.

19 Q. I just want to be fair.

20 A. No, that's fine.

21 Q. Were there assistant U.S. Attorneys in the  
22 room at this meeting, if you remember?

23 A. I would have to say there was, but I just  
24 don't remember, to be honest with you.

25 Q. In your investigation of the Garza murder

1 or your connection with this case at all, did you --  
2 and "you" being the New Mexico State Police -- did  
3 you cultivate any cooperators who would testify in  
4 the Castillo and Garza murders?

5 A. I think there was a gentleman that I had  
6 interviewed. He was also, you know, at the prison at  
7 the time of the incident. I believe it was a Mr. Ray  
8 Molina and, I remember interviewing him, and I  
9 believe he was willing to testify at the time to what  
10 he observed and what he heard.

11 Q. Okay, so Ray Molina. And then I guess  
12 Leonard Lujan would be a second?

13 A. Correct.

14 Q. So anyone else -- in the whole time you  
15 worked on this case, anyone else besides Ray Molina  
16 and Leonard Lujan?

17 A. No. They were the only two.

18 Q. So anytime in your investigation in this  
19 case, including your meetings with the district  
20 attorney's office and your meeting with the FBI where  
21 there may have been AUSAs there, did you ever hear  
22 anyone say that you should intentionally delay  
23 prosecution of the Garza and Castillo murders to gain  
24 a tactical advantage?

25 A. No. Of course not. Never.

1 Q. Did you ever hear anything like that?

2 A. No, sir.

3 MR. BECK: No further questions, Your  
4 Honor.

5 MR. BURKE: No redirect.

6 THE COURT: Okay. Nobody else has any  
7 redirect?

8 All right, Mr. Gonzalez. You may step  
9 down.

10 Is there any reason that Mr. Gonzalez  
11 cannot be excused from the proceedings?

12 MR. BURKE: He can be excused, Your Honor.

13 THE COURT: Mr. Beck, can he be excused?

14 MR. BECK: He may.

15 THE COURT: Not hearing any objection,  
16 you're excused from the proceedings. Thank you for  
17 your testimony.

18 All right. Where do we want to go next?  
19 We've still got a couple of witnesses, 104s, left?

20 MS. ARMIJO: Your Honor, I know that Mr.  
21 Lucero and his attorney, Mr. Fallick, are here.

22 THE COURT: Yes, I saw Mr. Fallick come in  
23 the back of the courtroom.

24 MS. ARMIJO: They are here.

25 THE COURT: Do you want to do that next?



1 MR. CASTLE: That makes sense, Your Honor.

2 THE COURT: Does that sound right?

3 So I keep my records together, the Exhibit  
4 C that the defendants introduced on its motion to  
5 dismiss -- that's a big exhibit; right? That's a big  
6 one?

7 MR. CASTLE: Yes.

8 THE COURT: All right. Mr. Fallick, why  
9 don't you come on in the well here a second and we'll  
10 talk a bit and get everybody on the same page.

11 What I understand is that you've sent a  
12 redacted transcript to Mr. Castle. Can you tell  
13 me -- I don't want you to reveal the redactions, but  
14 is it like just a few things? Is it big things?  
15 What, kind of, is the nature of the redactions that  
16 you had?

17 MR. FALLICK: The redactions all had to do  
18 with family members and locations, discussions during  
19 sentencing about those.

20 THE COURT: Would you say it's like a few  
21 lines, or is it pages and pages?

22 MR. FALLICK: It's pages and pages. There  
23 are discussions where Mr. Winterbottom was in the  
24 courtroom with Your Honor about the options for Mr.  
25 Lucero's release, you know, where he was going to be

1 released to, under what conditions; is it going to be  
2 with family, is it going to be with the halfway  
3 house? And there were some extensive --

4 THE COURT: It was more on the 216 than on  
5 the supervised release on 217?

6 MR. FALLICK: And there were things on the  
7 317, as well. There were discussions about location.

8 THE COURT: Let me see -- that nature of  
9 stuff, defendants okay with those redactions?

10 MR. CASTLE: Yes, Your Honor.

11 THE COURT: So y'all had the transcript,  
12 you felt like you got what you needed out of the  
13 transcript?

14 MR. CASTLE: I haven't looked at it, but --  
15 until we had a decision I didn't want to look at it.  
16 But I trust that Mr. Fallick has made appropriate  
17 redactions.

18 THE COURT: So the nature of those are okay  
19 with everybody? All right.

20 So anything else we need to discuss before  
21 we put Mr. Lucero on the stand?

22 MR. FALLICK: No, sir.

23 THE COURT: All right. Mr. Beck?

24 MR. BECK: I think we need to know what  
25 he's being offered for, and what is proffered.

1 THE COURT: All right. Why don't, Mr.  
2 Castle, you educate me a little bit or remind me a  
3 little bit as to what Mr. Lucero's testimony goes to.

4 MR. CASTLE: I'm going to do this in a way  
5 that I don't make a statement that might influence  
6 the witness.

7 THE COURT: All right. Mr. Lucero, why  
8 don't you do this? Why don't you step right behind  
9 that door right there, so we can have a robust  
10 discussion here about your possible testimony without  
11 you hearing it.

12 You can go either place, Mr. Fallick. You  
13 can go with him or stay here.

14 (Mr. Lucero left the courtroom.)

15 MR. CASTLE: Your Honor, in motion number  
16 1909 we indicated in paragraph 15 the basis of our  
17 calling Mr. Lucero. Mr. Lucero had participated in  
18 some interviews with law enforcement. During those  
19 interviews, or at least some of those interviews, he  
20 indicated that Christopher Chavez and Joseph Gallegos  
21 admitted their involvement in the murder of Mr. Garza  
22 after the murders happened, sometime afterwards. I  
23 can't place a date on it because the 302s are not  
24 very specific as to when that happened.

25 My questions will be whether he

1 implicates -- whether they implicated Billy Garcia;  
2 and if not, then my questioning ends. If the answer  
3 is, yes, they did implicate Billy Garcia, then I'm  
4 going to explore the circumstances surrounding it to  
5 determine whether it meets the 804(b)(3) exception.

6 THE COURT: Okay. All right. So this is  
7 one you're trying to squeeze into a statement against  
8 interest, Mr. Beck?

9 MR. BECK: I don't know what the statements  
10 are, but it sure sounds like it.

11 THE COURT: Okay. All right. So anything  
12 else? If not, why don't we go ahead and bring Mr.  
13 Lucero back in and put him on the stand.

14 (Mr. Lucero entered the courtroom.)

15 THE COURT: All right, Mr. Lucero, if  
16 you'll come on up to the witness box, before you're  
17 seated, Ms. Bevel, my courtroom deputy, will swear  
18 you in.

19 LEROY LUCERO,  
20 after having been first duly sworn under oath,  
21 was questioned, and testified as follows:

22 THE CLERK: Please be seated. Would you  
23 state your name and spell your last name for the  
24 record?

25 THE WITNESS: Leroy Lucero. L-U-C-E-R-O.

1 THE COURT: All right. Mr. Lucero, Mr.  
2 Castle.

3 DIRECT EXAMINATION

4 BY MR. CASTLE:

5 Q. Mr. Lucero, my name is Jim Castle. I'm one  
6 of the attorneys for Billy Garcia. I just have a few  
7 questions about a pair of murders that happened back  
8 in 2001 at the Southern New Mexico Correctional  
9 Facility. Specifically, do you know an individual by  
10 the name of Christopher Chavez?

11 A. I decline to answer based on the  
12 constitutional right not to be a witness against  
13 myself.

14 MR. CASTLE: Okay. May I inquire if the  
15 Government has given him immunity at this point?

16 THE COURT: All right. Mr. Beck, does he  
17 have any immunity?

18 MR. BECK: I don't believe at this point we  
19 have provided him a Kastigar letter and adequately  
20 debriefed him to have the protection.

21 THE COURT: So there is neither a Kastigar  
22 or any other type of immunity that has been given to  
23 him yet?

24 MR. BECK: He does not.

25 THE COURT: Mr. Fallick, why don't you talk

1 to him just a second and see if there's any problem  
2 with this particular question. If there is, then  
3 I'll make a call. But why don't you talk and see if  
4 on this particular question there is any problem.

5 MR. FALLICK: We have talked about --

6 THE COURT: You have talked, and you are  
7 instructing him not to answer this question?

8 MR. FALLICK: Yes, Your Honor. The  
9 discovery that we've been provided shows that there  
10 is at least some evidence of Mr. Lucero having  
11 communications that could be viewed as  
12 conspiratorial. We deny that there is any criminal  
13 activity, but at the same time, any answer to knowing  
14 any of these defendants or anything involving the  
15 gang could be a brick in the wall towards  
16 incrimination of Mr. Lucero, and I would ask him not  
17 to answer that question.

18 THE COURT: You're going to follow that  
19 advice, Mr. Lucero?

20 THE WITNESS: Yes, sir.

21 THE COURT: Well, I don't know the  
22 intricacies enough of this particular issue, but I  
23 guess I could see how, having read enough 302s, that  
24 this might incriminate him. So I'm inclined to  
25 sustain the privilege.

1 MR. CASTLE: Your Honor, I'm a criminal  
2 defense lawyer. I understand why the Fifth Amendment  
3 is being interjected at this point, and I would do  
4 the same, and I think it's a fair claim at this  
5 point.

6 THE COURT: All right. Do you have other  
7 questions you want to pose to make a record?

8 MR. CASTLE: No, they're all going to be  
9 the same. I'm just going to ask that we do the 104  
10 hearing with Mr. Lucero after he is given immunity.

11 THE COURT: All right. We'll put that on  
12 hold.

13 Anyone else need to do anything as far as  
14 Mr. Lucero? Mr. Burke? Anybody else?

15 MR. SOLIS: It all depends, for us.

16 MR. BENJAMIN: Mr. Gallegos would simply  
17 join Mr. Castle's request, Your Honor.

18 THE COURT: Mr. Beck, I assume there's  
19 nothing you need to ask him?

20 MR. BECK: No, Your Honor.

21 THE COURT: All right, Mr. Lucero, you  
22 may -- hold on just a second.

23 MR. CASTLE: Yes, Judge, I've been tipped  
24 off by a colleague, Mr. Blackburn, I should ask one  
25 follow-up question.

1 THE COURT: All right.

2 BY MR. CASTLE:

3 Q. Mr. Lucero, if I were to ask you any more  
4 questions that related at all to the 2001 murders,  
5 would you be reading the same document that you just  
6 read claiming the Fifth Amendment?

7 A. Yes, sir.

8 MR. CASTLE: Thank you.

9 THE COURT: All right.

10 Mr. Lucero, you may step down.

11 Is there any reason Mr. Lucero cannot be  
12 excused from the proceedings at this point?

13 MR. CASTLE: At this point --

14 THE COURT: Today.

15 MR. CASTLE: -- I think his attorney said  
16 that he would accept subpoenas, but I don't know if  
17 that still exists.

18 THE COURT: Is that still an offer on the  
19 table, Mr. Fallick?

20 MR. FALLICK: What I said was Mr. Lucero  
21 was -- personal service wasn't required. I'm  
22 assuming if I'm going to be his counsel throughout,  
23 I'll do it. But otherwise, Mr. Lucero had agreed --  
24 actually that was if he didn't have to come here  
25 today. But let me ask him about it. I don't think



1       there is going to be a need to personally serve him  
2       again, but we hadn't discussed it in this context;  
3       only in the context of not having to appear today.

4               THE COURT: Do you want to talk to him  
5       right now?

6               (Mr. Fallick and Mr. Lucero conferred.)

7               MR. BECK: Your Honor, the United States  
8       would request, based on earlier things that we've all  
9       been party to in the last week here, that Mr. Lucero  
10      be provided an attorney by the Court.

11              THE COURT: Well, Mr. Fallick is his  
12      attorney.

13              MR. BECK: Or stay on as his attorney.

14              MR. FALLICK: As long as the Court will --

15              THE COURT: After Mr. Winterbottom got off,  
16      I put Mr. Fallick on. That's my memory; right?

17              MR. FALLICK: Yes.

18              MR. BECK: I just wanted to make sure. I  
19      know we had discussions about his supervision  
20      terminating here, either this week or in the next  
21      couple of days, and that Mr. Fallick should probably  
22      stay on.

23              THE COURT: You agree to stay on in the SNM  
24      cases?

25              MR. FALLICK: Yes.

1 THE COURT: So we'll continue to pay any  
2 vouchers or anything for his continued  
3 representation.

4 MR. FALLICK: Yes, I'll agree to accept  
5 service.

6 MR. CASTLE: Thank you.

7 THE COURT: All right. Anything else?  
8 All right. Mr. Lucero, you are excused  
9 from the proceedings. Thank you for your testimony.

10 All right. What else do we want to take  
11 up? Mr. Castle?

12 MR. CASTLE: We don't have any more  
13 witnesses for the morning session.

14 THE COURT: So are you done with witnesses?  
15 Goodbye, Mr. Fallick.

16 Do you have any more witnesses today?

17 MR. CASTLE: We do have more witnesses  
18 today.

19 THE COURT: We've got one more 104?

20 MR. CASTLE: We have -- I'm not sure,  
21 Judge.

22 THE COURT: But you don't have any  
23 witnesses right at the present time?

24 MR. CASTLE: Well, we could call Detective  
25 Acee -- I mean Agent Acee. It's going to take a

1 while with him.

2 THE COURT: What's your pleasure?

3 MR. CASTLE: I think we should take a lunch  
4 break and come back fresh.

5 THE COURT: Is that what you want, Mr.  
6 Beck?

7 MR. BECK: I would be just as inclined to  
8 have Agent Acee go on the stand and see if we can  
9 push through. I'll leave it at the pleasure of the  
10 Court.

11 THE COURT: We're not going to push more  
12 than 1:30. Is that what you wanted?

13 MR. BECK: Yes, Your Honor. Yes.

14 THE COURT: And you're hungry, Mr. Castle?

15 MR. CASTLE: That is one thing I enjoy. I  
16 know that comes as shock to everyone in the  
17 courtroom.

18 THE COURT: Well, it's hard to get  
19 everybody assembled here. Why don't we plow out a  
20 little bit more? It will make the afternoon a little  
21 bit more pleasant. So we'll get you in the routine  
22 of what the jury liked in the last trial.

23 So, Mr. Acee, it looks like you're next.  
24 If you'll let Ms. Bevel swear you in before you're  
25 seated.

1 BRYAN ACEE,  
2 after having been first duly sworn under oath,  
3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 THE COURT: All right. Mr. Acee, Mr.  
6 Castle. And this is for purposes of the motion to  
7 dismiss?

8 MR. CASTLE: It is, Your Honor.

9 THE COURT: All right.

10 BY MR. CASTLE:

11 Q. Agent, were you the lead agent on an  
12 operation called Operation Atonement?

13 A. Yes, sir.

14 Q. And did that operation lead to the  
15 indictments, one of which is the matter that we are  
16 now hearing?

17 A. Yes, sir.

18 Q. There is an FBI case number assigned to  
19 Operation Atonement?

20 A. Yes.

21 Q. A number that ends in 6239655?

22 A. It is.

23 Q. Do you recall when that was initiated, that  
24 particular operation?

25 A. March of 2015. I think I did the official

1 opening the first few days of April. But I would  
2 tell you that I opened the case in March of 2015, and  
3 then got around following up with the official  
4 write-ups in April.

5 Q. And the case number starts 281D; is that  
6 right?

7 A. No, sir -- well, it may have. And I can  
8 tell you that the last digits you focused on are the  
9 important ones. Those first three have to do with --  
10 it was a 281, before I went to the OCDETF process for  
11 funding; once I obtained OCDETF approval from the  
12 U.S. Attorney's Office and the Department of Justice,  
13 it became a 245.

14 Q. Okay. So, basically, those initial numbers  
15 correlate to the status of the case as it goes along?

16 A. Yes, sir.

17 Q. When that operation started, was the focus  
18 on some information that had come to the FBI  
19 concerning a threat to certain corrections officials?

20 A. Yes, sir.

21 Q. And then did it expand after that?

22 A. Yes.

23 Q. As part of your work on that operation, did  
24 you access prior FBI investigations of the SNM?

25 A. Eventually, yes.

1 Q. When you say "eventually," when do you  
2 think you first started to access prior FBI  
3 investigations?

4 A. Well, if I may, I'd classify the case in  
5 three phases: The initial threats you mentioned. My  
6 next focus was developing informants and doing street  
7 buys. I put those together because, of course, the  
8 street buys lead to informants. And then the third  
9 prong would be the historical look. So I started the  
10 historical look last -- to give you a specific date  
11 is tough to do, but I will tell you that I spent  
12 several months kind of pounding the pavement and  
13 doing buys. And I think we did somewhere around 80  
14 or 90 drug and gun buys.

15 Q. So the first stage was dealing with the  
16 current threat, it sounds like?

17 A. Yes, sir.

18 Q. Then the second stage was casting the net  
19 wider to develop informants?

20 A. Yes. And charges, yes.

21 Q. And the drug buys were used primarily to  
22 have some leverage over people who you wanted to  
23 perhaps turn into informants?

24 A. It's a secondary reality. But I'll be  
25 clear, my primary objective was to put charges on

1 anybody that was S or affiliated with the S.

2 Q. But the end result was that because of the  
3 drug buys, you were able to develop some informants?

4 A. In many cases, yes.

5 Q. Now, in that third stage, was that when you  
6 start to access the historical investigations that  
7 both the FBI had conducted and also state and local  
8 authorities?

9 A. Yes, sir. I asked for anything and  
10 everything anyone had.

11 Q. Was there a temporal scope, or was it just  
12 everything on the SNM you could find?

13 A. Dating back to 1980. I even tried to get  
14 documents related to the riot.

15 Q. I want to focus specifically on FBI  
16 investigations. Do you recall how many separate  
17 investigations you were able to access concerning the  
18 SNM prior to Operation Atonement?

19 A. Yes, sir. And if you'll allow me to refer  
20 to my notes. In response to your Touhy letter, I  
21 took a bunch of notes to answer those questions.

22 Q. I understand.

23 A. Would you like me to name the various FBI  
24 cases?

25 Q. Yes, that would be good.

1 A. Sure.

2 Q. And you don't have to give the initial  
3 lettering. I think just the last set of numbers  
4 would probably be sufficient.

5 A. So the earliest case I found was the one  
6 that ends in 707: 54707. And that was opened in  
7 2000, and closed in 2003.

8 Q. Let's stop there on that one. What was the  
9 focus of that investigation?

10 A. That is a control file, or what you heard  
11 my colleague yesterday testify about as an intel  
12 file. Simply stated, it's a box for us to be able to  
13 file our reports into. So it's an intelligence file  
14 on prison gangs. And what I found in there was  
15 Pedersen's reports. I think there were 41 reports in  
16 all. And it was just a lot of adoption, him and the  
17 agents then adopting what other agencies had done.  
18 It looked to me like they had one informant and they  
19 filed one federal case.

20 Q. So you said it's kind of "a box." I know  
21 it's not a physical box.

22 A. Sure.

23 Q. But I think you're using that as a  
24 metaphor.

25 A. Yes, sir.



1 Q. So was this an SNM box, or was it an all  
2 prison gang box?

3 A. That was a -- that's a good question.  
4 There were other gangs there. I remember seeing Los  
5 Padillos. And I just looked at this box again the  
6 other day. I think Los Carnales, and a few other  
7 gangs that I'm not as familiar with. But there  
8 definitely was an SNM component to it.

9 Q. And you gave a specific number of reports  
10 that were in that file or box?

11 A. Yes, sir, I counted 41.

12 Q. How many of them dealt with SNM?

13 A. Maybe a dozen. I'm estimating. Many of  
14 which we saw in the last couple of days in these  
15 proceedings.

16 Q. In the early litigation in this case some  
17 of these boxes or files were identified for the  
18 Government by the defense. Do you recall that  
19 process happening?

20 A. I think I was responsible, or somewhat, for  
21 that, yes.

22 Q. And then after the defense was able to  
23 identify certain files, then you went and located  
24 them, and reviewed the contents of those to see if  
25 there was anything relevant to the case at hand?

1           A.    Yes, sir. I recall driving down at least a  
2 couple of times with lots of boxes for these  
3 attorneys to go through.

4           Q.    Okay. Why don't go to the next number.

5           A.    Sure. The next one I have ends in 54711.  
6 This is one of Lance Roundy's files. And that was  
7 opened also in November of 2000.

8           Q.    What was the focus of that investigation or  
9 file?

10          A.    SNM, purely SNM. And so this one starts  
11 with 281, like you pointed out earlier. So this is  
12 actually a dedicated investigative file, as opposed  
13 to an intelligence file. There is a focus now.

14          Q.    Do you know how long that particular  
15 investigative -- is it plan or investigative object,  
16 target -- I mean, is the file open for a certain  
17 length of time, I guess?

18                   (Ms. Harbour-Valdez entered the courtroom.)

19          A.    It's up to the Bureau. But I can tell you  
20 that it was closed on January 11, 2007.

21          Q.    And in that file did you count how many  
22 documents?

23          A.    No, sir.

24          Q.    Was there a lot of reports in there? Or  
25 can you estimate?

1           A.    I believe there was. I know your next  
2 question. But I do want to tell you that I now have  
3 all the SNM files together and all the boxes are  
4 together. And it's a lot -- it's difficult for me to  
5 say how much was in that file. I could follow up and  
6 get you a specific number, though.

7           Q.    My next question is who is going to win the  
8 Bucknell/Michigan State game. So if you could  
9 provide your answer to that, please?

10                So you indicated that was a dedicated SNM  
11 file?

12           A.    Yes, sir. And what I see is Roundy opens  
13 up a -- subsequently opens up a new file. My guess  
14 is he hadn't been an agent for very long, so he  
15 inherited that SNM file from someone else. So then  
16 he opened a new case, much like I did in 2015.

17           Q.    And that new case had a number, right, a  
18 different number?

19           A.    Roundy's? Yes, sir.

20           Q.    What number would that be?

21           A.    62017. And that was opened September 15,  
22 2008. And that has a lot of information in it.

23           Q.    So let's go back to 54711. Were there  
24 reports in that file that focused on the 2001 murders  
25 at the Southern facility?

1           A.    Yes.  Safe to say there would have been,  
2   just given the date range.

3           Q.    Now, before we move on to the other files,  
4   when there is an investigation that has been  
5   undertaken, does that box or that file contain  
6   everything, or are there tape recordings and other  
7   kinds of items that are placed somewhere else?

8           A.    I'll try to give you a real short, simple  
9   answer.  Anything we, as agents, turn in has got to  
10   have a case number on it.  So while the drugs may go  
11   to one place, a recording may go someplace else,  
12   there should be a record of all that under that case  
13   number.

14          Q.    So there will be a record, like a receipt  
15   or something in the file that would tell you that  
16   there is something that might be in evidence  
17   somewhere else?

18          A.    Yes.  All kinds of scenarios are jumping up  
19   at me where there could be an exception.  But  
20   generally, yes.

21          Q.    Well --

22          A.    Mr. Castle, I guess the hesitation might be  
23   because so many of these cases deal with adoptions,  
24   where -- I'm sure you understand that term -- where  
25   we're simply taking someone else's work and putting a

1 complaint on it.

2 Q. Right.

3 A. Sometimes we can't always find perhaps what  
4 you're referring to.

5 Q. The best way to go about it then would be  
6 to contact the agent you adopted it from and ask him  
7 if there is anything that might be located at  
8 different places?

9 A. Yes. I'll give you an example: If I  
10 adopted a drug case on a defendant, I'll keep the  
11 drugs and all that stuff with the original agency so  
12 I don't have to handle it.

13 Q. So during your collection of information  
14 concerning SNM, for each of the investigations that  
15 the FBI had, did you follow up with the agents that  
16 had done those investigations to see if there was  
17 additional information, some other location other  
18 than the file or the box that we're talking about?

19 A. Eventually, yes. Not initially when I  
20 opened my case, no. As it became apparent that  
21 certain things were being sought after, as a result  
22 of these hearings, then I would often do that.

23 Q. So based on the nagging of the defense?

24 A. Yes, sir.

25 Q. You didn't have to so readily agree with

1 that characterization.

2 Okay. After 62017, what was the next  
3 investigation?

4 A. I'm actually going to go backward, because  
5 I skipped ahead to give you both of Roundy's.

6 So the third case ends in 57713. That case  
7 was opened in 2003 by Sonya Chavez, and closed in  
8 2011.

9 Q. What was the focus of that investigation?

10 A. That was one of these intel files on all  
11 gangs in New Mexico. And there was an SNM component  
12 to that file.

13 Q. Before you go any further, would all, some,  
14 or none of these investigations that we've talked  
15 about and will talk about, were they part of the --  
16 one of the task forces that we've heard about?

17 A. Yes. And I have dates of start and stop of  
18 task forces for you, too.

19 Q. Okay. I'd asked a compound question: All,  
20 part, or none, and then your answer was yes. So were  
21 they all part of a task force investigation or focus?

22 A. What I can say -- I'm not sure -- but I can  
23 say that they were FBI investigations, and that we  
24 often invite other agencies in. But they were  
25 definitely FBI investigations.

1 Q. If we could -- well, we already heard from  
2 Pedersen that his was?

3 A. Yes, sir.

4 Q. With regard to Roundy's investigations,  
5 were they part of the task force, to your knowledge?

6 A. No. Roundy's second case file, the one  
7 that he actually opened definitely was, yes.

8 Q. And have you contacted the task forces to  
9 see if they maintained files on the SNM?

10 A. Yes.

11 Q. Do you feel comfortable that everything  
12 they had in regard to the SNM investigations has been  
13 turned over to you? Have you gone down there and  
14 looked to see?

15 A. That's an interesting question. I never  
16 feel comfortable that we have everything, because no  
17 disrespect to the Department of Corrections, but I'm  
18 always finding new things with them. I have  
19 physically gone to the Department of Corrections and  
20 searched with other agents, similar to serving a  
21 search warrant, in order to find everything. And I  
22 always find -- thus far, I've always found additional  
23 things.

24 I had to do the same thing with the  
25 Bernalillo County Sheriff's Department, where we went

1 into their old file room. And that's where I found  
2 some old letters from Angel Munoz. I'd like to think  
3 we have everything, but unfortunately, as you well  
4 know, it's an ongoing process.

5 Q. Sometimes boxes are even under tables?

6 A. I think we remedied that with that agent.

7 Q. So you looked under all the tables now, the  
8 desks?

9 (Laughter.)

10 A. His desk was empty when he got home from  
11 here. He had nothing on his desk when he got back to  
12 the office.

13 Q. I guess there are many kinds of  
14 indictments, aren't there?

15 Okay. The next file, if we could.

16 A. The next file ends in 59388. That was  
17 opened in July of 2005; closed a year later, April of  
18 '06. That also was a Sonya Chavez case.

19 Q. Was that a task force focus also?

20 A. Yes.

21 Q. And what was the focus of that  
22 investigation?

23 A. That was purely SNM.

24 Q. Before we go in the additional  
25 investigations, it sounds like the SNM was a focus of



1 the FBI since at least 2000; is that right?

2 A. Yes. I'd guess they probably came up on  
3 their radar in the '80s and '90s. But, as you may  
4 recall from media coverage years ago, the Bureau  
5 struggled with their inadequate computer system for a  
6 long time. And I think we have one now. But I've  
7 only been able to go back to -- I've only been able  
8 to find these files.

9 Q. Okay. The reason for so many different  
10 file numbers, it sounds like has something to do with  
11 the various number of agents who may have worked on  
12 SNM investigations over the years?

13 A. Yes, and you'll see that, as I'm seeing,  
14 that these cases overlap.

15 Q. So it wouldn't be, I guess, accurate to  
16 consider these completely separate investigations of  
17 the SNM, but rather, all part of an investigation of  
18 the SNM over the years?

19 A. I think we agree that the focus was the  
20 SNM. The Bureau definitely wanted to focus on them.  
21 How well we organized and shared that is maybe  
22 another question.

23 Q. But it sounds like throughout that -- at  
24 least up to 2015, it seems like at least one  
25 investigation or another was opened by the FBI on the

1 SNM; is that right? Does there seem to be any gaps?

2 A. No, sir. Because I absorbed Roundy's  
3 case -- would be the one -- the second Lance Roundy  
4 case, 62017, was opened in 2008. And to this day,  
5 it's technically open. I've assigned it to Agent  
6 Nancy Stemo, but we've absorbed it into Atonement.

7 Q. And it sounds like from 2000 to 2015, there  
8 was an FBI investigation open on the SNM, in which  
9 one of the task forces was also involved?

10 A. That's compound. So I agree with the first  
11 part. There were case numbers, and they were listed  
12 as open. Whether or not somebody was actually  
13 working them, I would probably disagree with that  
14 part.

15 Q. You can't work on a case every day,  
16 although this one probably has been an exception for  
17 you?

18 A. I agree.

19 Q. After the 5938 investigation, was there  
20 another one that was opened?

21 A. Yes, sir. That would be what I just  
22 mentioned, Mr. Roundy's case, 62017. And again,  
23 that's open to this day basically under Atonement.  
24 Much of this has to do with the disposition of  
25 evidence. It's tough for us to close cases, so they

1 stay open. But --

2 Q. So if a future investigation, like  
3 Atonement, wants to access it, they'll gather the  
4 materials from a previous file, but leave the  
5 originals, or whatever, a copy behind in that  
6 previous file?

7 A. I took all the originals. In this case, we  
8 made exceptions, and so we filled up filing cabinets,  
9 and we're up to eight now. We're just moving  
10 everything over so that we can respond to your  
11 nagging as quickly as we can.

12 Q. Okay, thank you. I always appreciate it  
13 when the opposition accepts my characterizations, but  
14 this might be an exception.

15 Was there an investigation ending in the  
16 number 62462?

17 A. Yes, sir. That's my next one.

18 Q. Okay.

19 A. That was opened in '09, closed in '12. And  
20 that's not exclusively the SNM. That case was opened  
21 down here in Las Cruces, and it was an intelligence  
22 file, and it would be given dash SNM for any SNM  
23 work -- should be given that.

24 Q. So there might be the same number dash Los  
25 Carnales?

1 A. Yes, sir, exactly.

2 Q. And who is the case agent on that?

3 A. That was a control file. So any agent --  
4 let's say you're the duty agent and someone calls in  
5 a tip about the SNM, you write up a report and send  
6 it to that file. It's a catch-all file, if you will.

7 Q. And is that file still opened, did you say?

8 A. No, sir, it closed in 2012. That was, I  
9 think, a policy decision by the Bureau to get rid of  
10 these intel files.

11 Q. If we were to look into each of the files  
12 that we've discussed, would we see records that  
13 touched on the 2001 murders?

14 A. I believe you would.

15 Q. So would it be fair to say that the 2001  
16 murders were at least a partial focus of each of  
17 these investigations from 2001, I guess, till 2015?

18 A. No, I don't think they were a focus. I  
19 just think that there is intelligence there. Because  
20 oftentimes what will happen is somebody gets  
21 arrested, they want to give us information, they'll  
22 say "I know who committed this murder," they'll tell  
23 us about the 2001 murder, and we'll send it to that  
24 file. But I wouldn't make that file the focus, no.

25 Q. Did the FBI -- well, in your review of the

1 materials, did the FBI present the 2001 murders to  
2 the United States Attorney's Office on a number of  
3 occasions prior to the indictment in this case?

4 A. I know of one for sure, which I'll call the  
5 "Jack Burkhead denial" that came from Roundy. I know  
6 other AUSAs have been involved in the case, but I  
7 don't know if we've ever actually got a formal  
8 declination.

9 THE COURT: I may have some of them up  
10 here, Mr. Castle. What are you looking for?

11 MR. CASTLE: I don't know which number --  
12 letter it is.

13 THE COURT: Do you want me to just hand you  
14 the exhibits and you can look at them?

15 MR. CASTLE: Yes, Your Honor.

16 THE COURT: Which one are you looking for?

17 MR. CASTLE: It's the Roundy one.

18 THE COURT: I've got them out of order.  
19 I've been up here looking at them, so I apologize for  
20 that.

21 MR. CASTLE: It's R.

22 THE COURT: Exhibit R is in there.

23 Mr. Castle, do you mind just handing that  
24 stack to me? I'm kind of looking at them.

25 MR. CASTLE: I'm an exhibit thief from way

1 back, Your Honor, so I think that's a safe plan.

2 THE COURT: No, you take what you need.

3 Q. Let me show you what's been admitted as  
4 Exhibit R. Do you recognize that document?

5 A. Yes.

6 Q. And is that in relation to the Burkhead  
7 declination that you were talking about?

8 A. Yes, sir. And that's Agent Roundy's file.

9 Q. So this would have been a declination as of  
10 when? They declined to take it to the Grand Jury as  
11 of when? Or, I'm sorry, declined to indict.

12 A. This indicates March 26, 2015.

13 Q. So would that have been at the same time  
14 you were opening up Operation Atonement?

15 A. Yes. I was not aware of this until later.

16 Q. So Operation Atonement had already started?  
17 Strike that.

18 When you started Operation Atonement did  
19 the United States Attorney's Office know about the  
20 circumstances concerning the threat to corrections  
21 officials?

22 A. If I understood you correctly, did I  
23 communicate to them that that's why I was opening it?

24 Q. No. I'm just wondering whether the U.S.  
25 Attorney's Office and the FBI both knew about this

1 threat, and were proceeding together?

2 A. Yes. As soon as I learned about it, I  
3 called Ms. Armijo, told her about it. It does me no  
4 good to open a case that they're not interested in.  
5 So I wanted to make sure there was interest first.

6 Q. So that would have been sometime in the  
7 middle to early March?

8 A. I called her from the penitentiary after I  
9 read the letters, so same day.

10 Q. Do you know when that would have been?

11 A. That was in March of 2015. I think mid  
12 March. And I'll be honest with you, sir, I knew very  
13 little about the SNM at that point in time.

14 Q. Had you already been in contact with Lance  
15 Roundy?

16 A. No, sir.

17 Q. Did you know that Lance Roundy had done any  
18 kind of work on the SNM?

19 A. I did. We had as a, like a SWAT guy, I'd  
20 helped serve some search warrants on some SNM guys  
21 over the years. Roundy, though, had transferred from  
22 Albuquerque -- I think -- excuse me, from Las  
23 Cruces -- I think when he actually wrote this it was  
24 from his new duty station.

25 Q. If you could look at page 2 -- well,

1 actually, hold on, let's stay on page 1. There is an  
2 indication here that, "Based on discussions with AUSA  
3 Burkhead, Lujan changed his mind and decided not to  
4 cooperate after approximately seven years of  
5 cooperation." Do you see that?

6 A. I do see that.

7 Q. In your work on the case, have you found  
8 any reports, other than this document, that reflect  
9 Mr. Lujan stating to FBI, or anyone else, that he did  
10 not want to cooperate anymore?

11 A. No, sir. And in fact Lujan will maintain,  
12 I believe, if you ask him, that that's a  
13 misunderstanding, or that's not true.

14 Q. This report, is this from Lance Roundy?

15 A. I believe it is. I'm going off memory. If  
16 I could look at the original, or if we could scroll  
17 down, maybe on the bottom of page, 2 perhaps.

18 Q. I think, yes.

19 A. It certainly looks like it is. But the  
20 next page will tell us. It was written by Lance  
21 Roundy, yes.

22 Q. So have you followed up with Agent Roundy  
23 on this concept that Mr. Lujan had, I guess, backed  
24 out of his agreement to --

25 A. No, sir.



1 Q. -- cooperate?

2 A. I have talked to Mr. Lujan, but not  
3 Mr. Roundy about that.

4 Q. Let's go to page 3, if we could. Are you  
5 familiar with that letter as well?

6 A. Yes, sir. This was the Burkhead letter I  
7 was referring to.

8 Q. If we can go down to the sentence that  
9 begins with "Unfortunately" --

10 THE COURT: This is still R?

11 MR. CASTLE: It is still R, yes.

12 Q. In this letter, "Unfortunately Mr. Lujan's  
13 credibility is in serious doubt due to the  
14 combination of his long and troubled criminal  
15 background, his history of malingering, and otherwise  
16 manipulating the penal system for personal gain, his  
17 receipt of past consideration, and ongoing demands  
18 for future consideration as quid pro quo for  
19 cooperation in this case," and then it goes on. Do  
20 you see that?

21 A. Yes, sir.

22 Q. So in your investigation, can you tell us  
23 what Mr. Lujan's history of malingering is?

24 A. Well, I mean, that sentence describes the  
25 SNM. If you want me to be specific to him, I think

1 he's -- you're going to get my opinion, but I think  
2 he's -- I don't want to say faked, but he's  
3 malingered some medical conditions to get better  
4 treatment over the years. I don't think that's  
5 unusual.

6 Q. Has he malingered about mental health  
7 conditions over the years?

8 A. My opinion, yes. He probably has some.  
9 I'm certainly no expert, but-

10 Q. Well, this letter says there is a history  
11 of malingering. Are there documents or materials  
12 that the FBI collected that demonstrated malingering?

13 A. Perhaps. I mean, I'm basing that on my  
14 conversations with him largely.

15 Q. How about the part about receipt of past  
16 consideration, ongoing demands for future  
17 consideration? What do you know, in your  
18 investigation in this case, about Mr. Lujan's demands  
19 and receipt of consideration, his quid pro quo?

20 A. He's made no demands of me. And I'm not  
21 sure what Mr. Burkhead is saying there.

22 Q. Your investigation ended up in Mr. Lujan's  
23 indictment, right?

24 A. I charged Mr. Lujan, yes.

25 Q. And he's getting consideration for

1 cooperating with that plea agreement; is that right?

2 A. Yes, sir.

3 Q. So he did get consideration -- perhaps  
4 didn't ask it of you, but asked it of the U.S.  
5 Attorney's Office.

6 A. Sure. Much later he did, yes.

7 Q. So I want to concentrate on what  
8 consideration he received prior to March 26, 2015 for  
9 a second. What -- in your investigation, what  
10 consideration did he receive prior to 2015, prior to  
11 March 2015?

12 A. Sure. Based on my review of the file, he  
13 got a one-time payment of \$500.

14 Q. Okay. And then what were his ongoing  
15 demands -- let me go back a bit. When it says  
16 "ongoing commands," it sounds like he made demands in  
17 the past, and also were continuing to make them as of  
18 March 26, 2015; is that right?

19 A. I don't believe so. Better question for  
20 Mr. Burkhead. But I don't believe so.

21 One of the questions you asked me was to  
22 identify the history of some of the sources. And I  
23 think one of them was Mr. Lujan. And he has a  
24 history of being open and closed. So that might  
25 address it as well.

1 Q. So in your view, all the materials that  
2 have been provided to the defense, have you found any  
3 evidence that says that he was making demands for  
4 future consideration as a quid pro quo?

5 A. No, sir. I'm not sure what Mr. Burkhead is  
6 saying there.

7 Q. When did you first see this exhibit?

8 A. In my review of the file, probably -- I  
9 don't really start the historical review until into  
10 the end of 2015, kind of late 2015, fall of 2015; I  
11 start focusing more on the historical aspects of the  
12 SNM. And that's in preparation for writing --  
13 helping prepare the language in the indictment.

14 Q. So you received this about the end of 2015?

15 A. I can't represent that. I was surprised to  
16 see this when I saw, it but I'm not sure when exactly  
17 I saw it. It could have been late 2015.

18 Q. Or early 2016?

19 A. Yes, sir.

20 Q. Would it surprise you that the defense  
21 didn't receive this until yesterday?

22 A. Well, nothing surprises me, particularly in  
23 this case.

24 Q. And are you aware that we didn't receive  
25 this until after the Court had ruled that the U.S.

1 Attorneys might need to come in and testify that it  
2 had analyzed this case?

3 A. I wasn't part of those conversations, sir.

4 THE COURT: Is it a good time for our lunch  
5 break, Mr. Castle?

6 MR. CASTLE: It always is.

7 THE COURT: See you in about an hour.

8 (The Court held a lunch break.)

9 THE COURT: All right. So it looks like  
10 we've got all the defendants back in, all the  
11 attorneys -- at least got an attorney for each  
12 defendant.

13 So Mr. Acee, I'll remind you that you're  
14 still under oath. Mr. Castle, if you wish to  
15 continue your direct examination of Mr. Acee, you may  
16 do so at this time.

17 BY MR. CASTLE:

18 Q. We're going to go back to Exhibit R, if we  
19 can. The last part of that sentence concerning  
20 Mr. Lujan's credibility says one of the  
21 characteristics that made him not a good witness was  
22 that -- his history of mental health issues. Do you  
23 see that?

24 A. Yes, sir.

25 Q. What are, to your knowledge, his history of

1 mental health issues?

2 A. I just know that he has them. I don't know  
3 the specifics.

4 Q. You don't know any specifics?

5 A. No, sir.

6 Q. And you looked at Lance Roundy's files; is  
7 that right?

8 A. I have.

9 Q. Earlier today we heard about an audio tape  
10 of an interview with James Garcia. Do you recall  
11 that?

12 A. Yes, sir.

13 Q. And was that a witness that was handled by  
14 Agent Roundy?

15 A. An arrestee, a defendant.

16 Q. But the interview that we were talking  
17 about that was on tape, that was with Lance Roundy;  
18 is that right?

19 A. Yes, sir.

20 Q. Have you contacted Agent Roundy to see if  
21 he recorded any other interviews that haven't been  
22 turned over?

23 A. My colleagues have.

24 Q. Okay. Recently?

25 A. Yes, sir.

1 Q. We haven't heard back, I take it?

2 A. I think you'll be getting some additional  
3 stuff.

4 Q. Did we finish all the various open file  
5 investigations?

6 A. I think the only one we didn't talk about  
7 is mine; that would be the next sequential one.

8 Q. In your review of the materials, when was  
9 the first time that the FBI obtained reports and  
10 documents from the State Police concerning the 2001  
11 murders?

12 A. At least in Roundy's 62017 file. That one  
13 is pretty robust. And that's where I have collected  
14 most of the State Police stuff.

15 Q. With respect to the joint task forces --  
16 let's start with the Southern one -- when did the  
17 Southern Task Force first get materials, such as  
18 reports, police reports, investigative reports on the  
19 2001 murders?

20 A. In the year 2001.

21 Q. When your investigation encompassed the  
22 2001 murders, did you take possession of the physical  
23 evidence that was held?

24 A. No, sir. I've made efforts not to. Where  
25 I verify that it's in good hands at the state or

1 local agency, I leave it there.

2 Q. Is that generally FBI policy?

3 A. It's not a specified area in policy. It's  
4 in -- I'll just leave it at that. It's at my  
5 discretion. Policy doesn't dictate one way or  
6 another.

7 Q. I take it, then, when you don't take  
8 possession, the reason is you have a certain level of  
9 trust with the State Police to be able to maintain  
10 the integrity of the evidence?

11 A. Yes. I will reach out and I'll verify they  
12 do have it. And I will let them know to not dispose  
13 of it, if it will be needed in the future.

14 Q. The Central New Mexico Task Force, did  
15 they -- when did they first start collecting records  
16 and documents concerning the 2001 murders, if ever?

17 A. I made some more notes, again, in response  
18 to your Touhy letter.

19 Q. You may look at them.

20 A. Thank you.

21 THE COURT: While he's looking at that, can  
22 I ask a question, on Exhibit C, the transcript that  
23 is attached, is that -- do we know the name or  
24 identity of that CW?

25 MR. CASTLE: Yes, it was Toby Romero.



1 And actually, while we're doing that, the  
2 Government informed us he had passed away in 2009.

3 THE COURT: Okay. So this, then, is more  
4 just historical for the fact when the FBI began to do  
5 its investigation --

6 MR. CASTLE: Yes.

7 THE COURT: -- and other things?

8 MR. CASTLE: It's just for prejudice on the  
9 concept of delay.

10 A. So what we've been calling the Central Task  
11 Force made references. But I didn't see -- I didn't  
12 find -- and I'll represent to this day that there are  
13 no actual New Mexico State Police reports in that  
14 file. There are just summaries, which leads me to  
15 believe they interviewed them, but didn't maintain --

16 Q. Does that make sense because crimes that  
17 occur in the Southern facility would be in the  
18 jurisdictional area of the Southern task force?

19 A. Yes, sir.

20 Q. Are you familiar with a task force officer  
21 by the name of Edgar Rosa?

22 A. I don't believe I've ever met him. But  
23 through this case, I've become aware of who he is.

24 Q. And what was his role in this case, meaning  
25 the 2001 murders?

1           A.    I don't want to sound disrespectful to him,  
2   but I don't think he had a role.  He was a Las Cruces  
3   police officer assigned to the FBI.  He wrote very  
4   few reports.  And I didn't note any arrests.

5           Q.    Did he develop some -- well, did he conduct  
6   some interviews and develop some confidential  
7   sources?

8           A.    I think he had at least one source, based  
9   on the Bates numbers you asked me to review, and I  
10   think that source -- and I've identified as many of  
11   them as I can, but I think that he's -- twice -- it  
12   sounds like it's two sources, but I think it may be  
13   the same person.

14          Q.    Were you able to identify who that person  
15   was?  Do you want to take a look at the document?

16          A.    Sure.  So I did all the Bates numbers you  
17   sent me, I've taken a bunch of notes on, and I think  
18   I've identified maybe 90 percent of the sources that  
19   are talked about in here.

20          Q.    Okay.

21                THE COURT:  And this timeframe is what?

22                MR. CASTLE:  2001, I believe.

23                THE COURT:  Back to 2001.

24          Q.    Let's go to -- are these -- the identities  
25   of some of these sources, have they made it through

1 the channels to the defense yet, or do you know?

2 A. Sir, I've been working on this the last two  
3 days while I've been at the table. These were  
4 previously represented to me that Corrections  
5 couldn't identify them.

6 Q. Okay.

7 A. And I won't tell you that I have a positive  
8 identification, but I can point you, based on other  
9 Bates numbers in the discovery, I think you'll agree  
10 with me that it's the same person.

11 Q. Maybe to short-circuit this, to make it  
12 quicker, if you could just tell us the page numbers  
13 of informants that you've now identified, and the  
14 Government can give us those names off the record?

15 A. I'll read them out loud if you want.

16 Q. Okay, that's fine.

17 A. So you'd like me to tell you the Bates  
18 number?

19 Q. Yes, please.

20 A. Okay. The first one you asked me to look  
21 at was Bates 133.

22 Q. Who is that?

23 A. I believe that's Jimmie Gordon. I'll go  
24 slowly here. You also asked me to look at Bates  
25 19128. And he's listed as Source 13. I think that

1 is also Jimmie Gordon.

2 Q. And --

3 MR. SOLIS: I didn't hear the source  
4 number. I beg your pardon.

5 THE WITNESS: Source at Bates 19128. He's  
6 called Source 13. I think that's Jimmie Gordon.

7 MR. CASTLE: Before we go any further, just  
8 for the Court's knowledge, I'm going through this  
9 process because it may alter where we go in these  
10 hearings.

11 THE COURT: So if I understand what is  
12 taking place, looks like Mr. Acee has spent some  
13 time, and he may be able to identify some of the  
14 people that y'all have identified, or you had said  
15 could no longer be identified as CIs and CWs in some  
16 of the old materials.

17 MR. CASTLE: Yes, exactly. And I don't  
18 know if the Court wants us to do this off the record.  
19 But I'm not going to want to call a CO that their  
20 sole purpose is to establish the exculpatory nature  
21 of a particular piece of paper, when --

22 THE COURT: It's your call. Looks like  
23 we're making some progress, whether it can be made  
24 outside or off. But it's your call. Do what you  
25 want.

1 MR. CASTLE: We'll just go forward then.

2 A. I think you can verify that. Look at Bates  
3 507. I'll submit to you that that's where I found  
4 that this is the same person.

5 Q. Okay. Who is the next one?

6 A. Bates 600. This is Augustine Saenz. And  
7 he comes up quite a bit in here, so we'll come back  
8 to that. I'll also point out that the redaction at  
9 the top of that page is not a source number. It's  
10 the date; it just doesn't have dashes in it. So the  
11 date is 4/30 of 2001.

12 On Bates 605 -- I saw this on the screen  
13 earlier -- this is Rosa's source. I don't know who  
14 this is, and I don't believe it's a good source.  
15 Everything else in here is unfounded.

16 And then they cite this same source again  
17 in 722. Bates 722 is the next one you asked me to  
18 look at. This is largely unfounded information the  
19 source is providing.

20 Q. Well, right now, if you can, just confine  
21 to the identities of sources. Then we can go back  
22 and we can ask some questions about the unidentified  
23 ones.

24 A. Sure. You got it.

25 There was a lot of discussion at Bates

1 14210 about Source A, or Source 1-A, this is  
2 Augustine Saenz. It closely relates to Ray Molina's  
3 statement and Willie Amador's. But I rule those guys  
4 out because he lists them as suspects, so he wouldn't  
5 put himself in there. And this statement matches  
6 Augustine Saenz.

7 Q. Well, just for a moment, many times I've  
8 seen in various 302s or interviews where the source  
9 is unidentified, and then they put the name of the  
10 source as -- in the statement, so as to not reveal  
11 who the source is; is that correct?

12 A. We definitely do that. I've not seen  
13 Corrections Department do that. And I will point you  
14 to the Bates numbers where -- what I think added to  
15 the Corrections -- the misunderstanding here -- is  
16 you'll find in discovery -- which I found just in the  
17 last few days, where the Department of Corrections  
18 interviews these guys' true inmate name, inmate  
19 identification. Then, when they want to do  
20 disciplinary on one of the defendants, they call them  
21 Source 1, 2, 3, 4. But the statements match up  
22 verbatim.

23 Q. So at least the FBI -- let's go through  
24 kind of an example. If I'm a confidential source and  
25 I've committed a crime with Mr. Cooper --

1 MR. COOPER: No.

2 Q. -- and I come forward and blame him for it,  
3 and you put that in a report, you might say: The  
4 source said Mr. Cooper and Mr. Castle were involved  
5 in a crime, and he blamed Mr. Cooper, right?

6 A. I don't like that scenario. But, yeah,  
7 essentially. It would be more if you guys could  
8 figure it out too quickly. But we do that to buy  
9 time because, as you well know, they're going to read  
10 the complaint, and we want to just buy more time  
11 before -- but yes.

12 Q. And you haven't seen an example of that in  
13 the Department of Corrections' reports that you're  
14 aware of?

15 A. Not the ones you asked me to review, no.

16 Q. Or any that you can recall?

17 A. No. They're just not that sneaky, or  
18 they're not thinking that far ahead. They're simply  
19 putting a source number down when they want to give  
20 one of these guys a disciplinary justification.

21 Q. Let's go to the next one.

22 A. The next one is going to have a bunch of  
23 them. It's at Bates 19127. I'll start at the top of  
24 the page. Source 5 is Joseph Otero.

25 Q. How did you determine that?

1           A.    His statement matches verbatim, that he  
2 gives to Corrections.

3           Q.    Which statement of his?

4           A.    The post-homicide statement. And  
5 everywhere else on the page I've noted where you can  
6 find it on the Bates, but I just found this one just  
7 before the lunch break, so I didn't know where the  
8 Bates number is. I think it's going to be around  
9 Bates 500, in that area. There is a bunch of  
10 interviews with inmates in the Bates 500 series.

11          Q.    Well, let me show you Bates page 1222. If  
12 we can pull that up. Does that appear to be the  
13 interview you're talking about with Mr. Otero?

14          A.    No. But that's Otero, too, because he says  
15 he's his neighbor and he's not SNM, but he's from Los  
16 Padillas, and that's Otero. He was the only Los Pa  
17 guy in there.

18          Q.    And in this report of Mr. Otero's statement  
19 does he indicate that he knows anyone who committed  
20 the murder of Garza, or can provide information on  
21 who killed Garza?

22          A.    No, the material I'm reading does not.

23          Q.    Have you talked to Joseph Otero?

24          A.    No.

25          Q.    Let's go ahead and pull up 19127 that



1     you've identified as Joseph Otero, if we could, on  
2     the screen.

3             A.     Mr. Castle, do you want me to find where it  
4     correlates?

5             Q.     I may in a minute.

6             A.     I was going to say I have it over there.

7             Q.     I believe you said Source No. 5, which is  
8     the top here, was Mr. Otero; is that right?

9             A.     Yes, sir.

10            Q.     And that was disclosed to the defense this  
11    morning?

12            A.     I think I'm telling you now. I don't know  
13    if you knew before this.

14            Q.     Whoever Source 5 was says he knows who  
15    killed Garza: Patterson, Eugene Martinez, and  
16    Christopher Chavez; is that right?

17            A.     Yes.

18            Q.     So how did you look at this statement and  
19    correlate it to the previous Otero statement which  
20    didn't identify anyone?

21            A.     If you'll show me -- excuse me, if you'll  
22    allow me, I have it in my materials. But it doesn't  
23    relate to the one you just showed me.

24            Q.     Okay. So using this same kind of concept  
25    that we used with James Garcia, those two statements

1 don't correlate, do they?

2 A. Those two do not, no.

3 Q. Why don't you go ahead and retrieve the one  
4 that --

5 A. I'm sorry. I didn't tab all these. I've  
6 just been flipping through them the last few days.

7 THE COURT: Do you need some stickers?

8 THE WITNESS: Yes, sir, thank you.

9 A. What I can tell you, if it helps, is that  
10 it is a memo similar to the one that you provided.  
11 Just -- I was kind of jotting my notes down as I was  
12 sitting there, not sure when I'd be coming up here.

13 Q. Was it an FBI 302?

14 A. No, sir. It was a Corrections' memo, and  
15 he's clearly identified on it as Joseph Otero;  
16 somebody has taken a statement from him. The key  
17 thing that helped me is the Los Padillas reference.

18 Q. That's a street gang, right?

19 A. Yes, sir.

20 Q. There are lots of people in that street  
21 gang?

22 A. There is, but not in that pod. And so I  
23 had narrowed it down to two guys based on a  
24 friendship; two different inmates say they were  
25 friends with him. And then he's giving a debrief

1 where he's saying that he's not SNM, he's a neighbor  
2 and he's Los Pa. And then I found this same verbatim  
3 statement, this Source 5 statement.

4 Q. And are there any 302s by Mr. Otero that  
5 exist?

6 A. Not yet.

7 Q. Not yet. Let's go to the next statement if  
8 we can, the next informant.

9 A. Sure. Source 9 is Salvador Jaramillo. And  
10 you can find that at Bates 1216, the confirmation.

11 Q. And when you were giving us Bates numbers,  
12 you're saying that we should look there to see if the  
13 information correlates with the information that is  
14 listed under a particular source's identifier?

15 A. To be clear, to see if you agree with me,  
16 yes, this is my -- I'm not telling you absolutely,  
17 but this is, based on my review, who I think the  
18 sources are.

19 Q. But that's the process you're going  
20 through?

21 A. Yes, sir.

22 Q. Thank you.

23 A. Source 10 is Fred Neri. And look at Bates  
24 1217.

25 Source 11 is going to be Mark Gillete. You

1 can see Bates 1217 as well.

2 Source 12 is F. Denton Jones, D-E-N-T-O-N  
3 Jones, see Bates 1217.

4 Now, we're talking about the Frank  
5 Castillo -- we're at the middle of the page and it's  
6 talking about Source 1 for Frank Castillo, is going  
7 to be Ricardo Lopez. Look at Bates 504.

8 Source 2 is Gabriel Sanchez, Bates 503 and  
9 504.

10 Source 3 is going to be Mr. Troup.

11 Source 4 is Chris Pacheco.

12 Source 5 is Thomas Madrid.

13 Source 6 is Ralph Romero.

14 And those can all be found at Bates 505.

15 Source 7 is Michael Jaramillo. And I'm  
16 sorry, I don't list where the Bates is, but I think  
17 it's also at that 500 range.

18 The next Bates number you asked me to look  
19 at, or to try to determine who the source is, is 521.  
20 These are the ones that Mr. Santistevan was talking  
21 about. These are a little tougher. I've been  
22 working on these this week. And I think the first  
23 one at the top of the page -- it doesn't indicate a  
24 source number, but I think that's Lawrence Torres.

25 Q. Okay. Let's stop for just a second. Did

1     you access Mr. Santistevan's logbook?

2             A.     I'm purely going off what I had in these  
3     binders which is discovery, Bates number discovery.

4             Q.     Did you hear his testimony? Were you here  
5     when he testified?

6             A.     I was. I was really digging in this stuff,  
7     though.

8             Q.     Would you accept my representation that he  
9     indicated that he kept logbooks, and he had them all  
10    the way to 2016 that would give you the identity of  
11    his informants?

12            A.     I'll trust you, sir.

13            Q.     And I take it that probably, after hearing  
14    that, you're going to try to see if you can find  
15    those logbooks?

16            A.     And we've asked for them. To be clear, Mr.  
17    Myers, Mark Myers, led that portion up, and we've  
18    asked for that stuff time and time again.

19            Q.     Okay. Let's go ahead.

20            A.     It would save me a lot of time, too,  
21    looking through all this stuff.

22                    So at the top of Bates 521, I think that's  
23    Lawrence Torres, and that's just based on me studying  
24    his statements over the years. I can't certify that  
25    that's him.

1           The next three on this page are guys that  
2 I'm unable to identify.

3           Q.     Okay.

4           A.     So turning to Bates 19128, at the top of  
5 the page, Source 9 is Ruben Romero. And I would  
6 suggest you would look at Bates 503 and 504. That  
7 will match.

8                     Source 8 is going to be Ruben Garcia, also  
9 at Bates 504.

10                    Source 5 -- actually, I guess the next one  
11 under Allen Patterson, it's talking about the  
12 suspects. Under Allen Patterson, Source 7 is going  
13 to be Ray Molina.

14           Q.     So who would Source 5 be?

15           A.     Source 5 would be Joseph Otero. This is  
16 that same -- yeah.

17           Q.     I'm sorry, who was Source 7?

18           A.     Ray Molina, Boxer.

19           Q.     Now, in confirming that was Ray Molina,  
20 have you interviewed Mr. Molina?

21           A.     Not yet.

22           Q.     And is there a 302 on Mr. Molina?

23           A.     Not by my team. I'm expecting one, but not  
24 yet.

25           Q.     If it occurred, it would have happened

1 prior to 2015?

2 A. Yes, sir. I'm not certain that I've seen a  
3 302. I've seen State Police transcripts and  
4 statements. But I don't know that I've seen an FBI  
5 one.

6 Q. Okay. Let's continue.

7 A. Source 13, Jimmie Gordon again. I think I  
8 mentioned him at Bates 133.

9 Q. Actually, let's stop with Mr. Gordon. Do  
10 you recall that Mr. Gordon indicated that an  
11 individual by the name of Leroy Lucero approached him  
12 with some New Mexico Corrections Department inmate  
13 master record entry flyers? Do you recall that?

14 A. No. Is that one of the Corrections  
15 reports?

16 Q. Yes.

17 A. I can't say that sounds familiar.

18 Q. Do you recall him indicating that those  
19 flyers contain information on people that were  
20 informants? Do you remember any of this?

21 A. No. Did we talk about that this week?

22 Q. No.

23 A. Okay.

24 Q. So you have never followed up on that  
25 information, you don't recall it; would that be fair

1 to say?

2 A. Yes.

3 Q. Let's go ahead.

4 A. Source 15 has alluded me, as has Source 10.  
5 Those were the two I was working on before I got  
6 called up here. So I'd be turning the page now. At  
7 Bates 1253 there is not much information here, and I  
8 can't tell who it is, so I'd go on to the next page.

9 So in this stack, sir, I'm not sure who you  
10 wanted me to ID, so I just tried to ID all of them.  
11 I think you asked me to review Bates 1254 through 59.  
12 So I can go through each page if you want.

13 Q. I'm just going to ask some specific  
14 questions.

15 A. Sure.

16 Q. With regard to Jimmie Gordon, I want to  
17 show you -- if we can go to page 607 of the  
18 discovery -- yes, 607 -- if we can briefly go through  
19 this and tell us when you want to get to the next  
20 page or scroll down.

21 A. Okay.

22 Q. Let's go to the next page. Do you recall  
23 this being a 302 of Jimmie Gordon?

24 A. No -- well, this is a -- this is a -- well,  
25 I was trying to determine if this was a 302 or 1023.



1 Because of the formatting here, you can't tell. But  
2 it's probably a 302.

3 Q. Shall we go back to the front page?

4 A. Not if it's not important to you, doesn't  
5 matter to me.

6 Q. This is a federal FBI form?

7 A. It's one of our forms, yes.

8 Q. And who conducted the interview, do you  
9 know?

10 A. Can we look at the last page? It's a 302.

11 Q. If we go back to page 1 of -- 607 is the  
12 Bates stamp number. This appears to be an interview  
13 in 2001, August 13th of 2001, does that look right?

14 A. Yes.

15 Q. And at that time who would have been the  
16 FBI agent in this Southern Task Force that would have  
17 been conducting interviews on the SNM?

18 A. I don't know, sir, because this is Agent  
19 Roundy's file. I believe that -- because he wasn't  
20 an FBI agent in 2001, he inherited it when he got  
21 here. So I couldn't tell you whose this is. I was  
22 still a parole officer in South Central LA at this  
23 time.

24 Q. I think earlier you indicated that you had  
25 contacted the case agents who handled the various SNM

1 investigations over the years from the FBI.

2 A. As best I could, yeah.

3 Q. So were you able to determine who was doing  
4 the SNM investigation in 2000, 2001, all the way up  
5 until Lance Roundy took it over?

6 A. For the most part, but that doesn't tell us  
7 who wrote the report. That just tells us whose case  
8 file it was.

9 Q. Who had the case file 54711 in 2001?

10 A. I think it was Andrew Armijo.

11 Q. Let's go back to the next page of this. If  
12 we can, up here at the top where it begins, "Leroy  
13 Lucero," do you see that the FBI collected  
14 information that Leroy Lucero was obtaining flyers on  
15 other inmates and making copies of them, or having  
16 this source make copies of them, and then return the  
17 originals to Mr. Lucero? Do you see that?

18 A. I do.

19 Q. Then it goes on to say some other things  
20 about Mr. Lucero's possible involvement?

21 A. Yes.

22 Q. And that would be in regards to the 2001  
23 murders; is that right? Or do you want look back at  
24 page 1?

25 A. It could be in regard to the 2001 murder.

1 It's good intelligence information.

2 Q. So would it be correct that, at least as of  
3 August of 2001, the FBI had some evidence, or at  
4 least a source of information that indicated that  
5 Leroy Lucero, at or about the times of the murders,  
6 or before the murders, had been collecting at least  
7 data on other inmates; is that right?

8 A. According to this source, yes.

9 Q. Tell me about the Southern's Task Force's  
10 files on the 2001 murders. Are we talking ten pages,  
11 a hundred pages, thousands of pages?

12 A. Probably closer to thousands, because  
13 that's where Roundy was assigned to the Southern New  
14 Mexico Gang Task Force, and based on my review of his  
15 files, had good liaison with Corrections and State  
16 Police.

17 Q. When exactly did you say Roundy took over  
18 down there?

19 A. I think he became an FBI agent in 2008. So  
20 at that time.

21 Q. So how many documents in the Southern Task  
22 Force's files predate when Agent Roundy took over the  
23 investigation?

24 A. Seven years' worth. I couldn't tell you  
25 though.

1 Q. Lots?

2 A. Seven or eight years' worth. Well, he more  
3 than quadrupled it. I mean, he put a lot of work in.  
4 The agents before that -- again, no disrespect to  
5 them, but I didn't see much work being done.

6 Q. Okay. If we can go to page 598. Do you  
7 recognize this document?

8 A. I think so. I've been looking through a  
9 lot of Mr. Sprunk's stuff based on your Touhy later.

10 Q. Mr. Sprunk was a Special Agent from the New  
11 Mexico Corrections Department that was deputized and  
12 made part of the FBI Task Force; is that correct?

13 A. I don't think so. I think he was an STIU  
14 officer. I don't know who gave him that title, and I  
15 don't know that he was part of the task force.

16 Q. Do you know one way or the other?

17 A. Well, Corrections has told me he was an  
18 STIU officer.

19 Q. Okay. But at least the task force was  
20 collecting information from Mr. Sprunk?

21 A. That's fair to say.

22 Q. If we could scroll down a little bit.  
23 Great. So this is an indication at least that the  
24 FBI was collecting information concerning the 2001  
25 murders as early as August 13th of 2001?

1 A. I agree with you.

2 Q. In your review of the case, did you  
3 determine or learn that the formal investigation or  
4 the state cases against or concerning the two murders  
5 was reassigned to an Agent Venegas on April 28th of  
6 2003?

7 A. I've seen that.

8 Q. And that the reason it was reassigned to  
9 Agent Venegas was because he was going to the FBI's  
10 Gang Task Force?

11 A. That seems to be the justification.

12 Q. In your review of the materials, does it  
13 appear to you that a lot of the reports we talked  
14 about, the State Police reports, had been copied and  
15 made available to the FBI Task Force in 2003?

16 A. I imagine they would have. I've not seen  
17 them in -- I don't see them until Roundy's case file.  
18 But I imagine, if they've got a state police officer  
19 on the task force, they'd be available.

20 MR. CASTLE: Just taking a moment, Your  
21 Honor. I'm passing by informants we now know the  
22 identity of.

23 THE COURT: Sure. That's fine.

24 Q. Agent, in your review of the materials from  
25 the task force -- the Southern Task Force, did you

1 find that -- actually, even before the 2001 murders  
2 ever occurred that the Southern Task Force was  
3 provided security threat assessments for the SNM  
4 Gang, specifically a 309-page document which detailed  
5 the members of the gang and things of that nature?

6 A. That doesn't jump out at me, but I can tell  
7 you that the task force wasn't created until 2001, at  
8 Southern.

9 Q. Well, let's take a look at Exhibit B, if we  
10 could, page 2. Do you see here where it indicates  
11 the details section the bottom of the page. "In  
12 October 2000, task force officers Andres Nevarez and  
13 Edgar Rosa were provided the security threat  
14 assessment on the above captioned gang." And it  
15 talks about the 309-page document?

16 A. Yes, sir.

17 Q. And that's an FBI form?

18 A. This is what we call an EC, or an  
19 electronic communication, yes.

20 Q. So after seeing that now, if you look up  
21 here, does it say to Albuquerque, from Albuquerque,  
22 and then it says SNMGTF?

23 A. Yes.

24 Q. What does that stand for?

25 A. Southern New Mexico Gang Task Force.

1 Q. So does that perhaps refresh your memory  
2 that that task force was in existence in 2000?

3 A. What this does is tells me that the agents  
4 I relied upon to tell me when the task force started  
5 are off.

6 Q. Okay.

7 A. I wasn't here then or a member of that task  
8 force.

9 Q. I understand. I'm not blaming you. I'm  
10 just asking if that now changes your opinion of  
11 what --

12 A. Good evidence that it was in existence in  
13 2000.

14 Q. So, in essence, the SNM was already a  
15 target of the FBI in 2000?

16 A. Yes. I mean, that's indicated to me by the  
17 title of the case. So they've opened a case on them.  
18 And it's the second serial, sir, so this is the  
19 second document in that file.

20 Q. And 54711, I think you said that continued  
21 for a while; is that right?

22 A. Yes, this is the one that I said Roundy,  
23 I'm assuming, inherited because it's clearly opened  
24 well before he's even an agent. Ultimately, what our  
25 files show is he was the last agent assigned to it.

1 Q. Now, at one point were the files on these  
2 murders given over to the New Mexico State Police  
3 Cold Case Unit?

4 A. The FBI files weren't, but I believe State  
5 Police's files were internally transferred.

6 Q. And did you or someone at your direction  
7 review the New Mexico State Police Cold Case Unit  
8 files?

9 A. Yes.

10 Q. And was that a different detective over at  
11 New Mexico State Police that then had the files and  
12 took over the investigation?

13 A. I'm not sure who the detective was. I just  
14 asked for everything they had on -- on my homicide  
15 board I have, I think, 37 murders we're looking at.  
16 So I reached out to the agencies and said, "Send us  
17 everything on these cases."

18 Q. If we can pick up at page 1215 of  
19 discovery. I think this was also represented as  
20 Exhibit U. This indicates that the murder case files  
21 were relinquished to Special Agents Mackenzie Monarko  
22 and Sonya Chavez, and appears to be around July 30 of  
23 2008; is that right?

24 A. Yes.

25 Q. Were one of those files open under Sonya



1 Chavez in 2008?

2 A. She had two files open under her.

3 Q. What about Mackenzie Monarko?

4 A. That was her new agent. Sonya was the  
5 training agent.

6 Q. Like Agent Stemo?

7 A. Or Sainato or Neale, yes, similar.

8 Q. So they don't open up their own file, they  
9 just work with the lead agent?

10 A. Yes. She had a file open in 2008, yes.

11 Q. At some point in time in your investigation  
12 did you find out that STG files on various witnesses,  
13 as well as defendants, had been destroyed on the  
14 basis of the file retention policies of the  
15 Department of Corrections?

16 A. I don't think so.

17 Q. And do you know how many years the  
18 Department of Corrections keeps STG files?

19 A. No.

20 Q. When did you start to look for -- well, any  
21 of the prior investigations, prior to Atonement, did  
22 they result in the collection of records such as STG  
23 files on various suspects and witnesses?

24 A. I don't think what I would call the full  
25 STG file, which shows how they were validated. But

1     there definitely was I'll it call escape flyers, or  
2     the information sheets. I noticed a lot of those. I  
3     think in Atonement was the first time we actually got  
4     the actual STG files, from my recollection.

5           Q. I think you indicated -- I know you  
6     indicated that you'd interviewed or at least spoken  
7     with the various agents that previously investigated  
8     the SNM?

9           A. As many as I could find, about half of  
10    which are retired. So it took a little time.

11          Q. Did that include Andrew Armijo?

12          A. No. I have not --

13          Q. He's retired?

14          A. Sometimes these retired FBI guys are hard  
15    to find.

16          Q. That's the nature of the business.

17                 So then I guess you didn't ask him if he  
18    has any other materials or there would be another  
19    location for materials that he had collected?

20          A. To answer your question, I have not talked  
21    to him about any of his cases. But I can also  
22    represent that he should not have them at home with  
23    him or at any other place than the Bureau.

24          Q. I understand. But I think you said earlier  
25    that if you don't talk to the actual agent, you may

1 not know where everything is, because it's not always  
2 necessarily kept in that one file; is that right?

3 A. No. Maybe you misunderstood me, sir. If  
4 the agent does a good job documenting -- I mean, I'm  
5 going to look at the 302, and if it says it was  
6 recorded, then I know I'll look for a recording and I  
7 know where to look.

8 But as was the case with Daffy that was in  
9 here earlier, that 302 didn't say there was a  
10 recording. So I wouldn't know to go look for a  
11 recording. I can't go to a central place and just  
12 say, Give me all the recordings. If the agents  
13 aren't taking the time to specify that there is one,  
14 I don't know what's out there. Does that help?

15 Q. I understand. So with regard to Agent  
16 Armijo, without talking to him, we don't know whether  
17 there is a set of audio recordings of confidential  
18 informants and other witnesses that might exist  
19 somewhere?

20 A. I'll agree with you.

21 Q. And is there some kind of central database  
22 that you can access to find that out?

23 A. No. And I will tell you that, given the  
24 computer changes we've had, finding the stuff from  
25 2001 electronically has been a challenge.

1 Q. Needle in a haystack?

2 A. No. I mean, we just have to search it 10  
3 different ways to try to make sure we get everything.  
4 And that's why I think I've turned over stuff four  
5 and five times, we're seeing repetitive stuff in  
6 discovery.

7 Q. In your review of the 2000 investigation  
8 that Agent Armijo had for several years, did you find  
9 any audio recordings?

10 A. I think that's the one that the -- yes,  
11 that the Leonard Lujan tapes, cassette tapes, were  
12 in. Because I had to send those off to Quantico to  
13 get turned into DVDs so we wouldn't have to mess with  
14 cassette tapes.

15 Q. That would have been the interview  
16 conducted in August of 2007?

17 A. Yes. And that case file, I think, closes  
18 in '07. So I also came across some of Frederico  
19 Munoz had given some recorded debriefs. And again, I  
20 sent all that stuff off for DVDs, so I did come  
21 across some stuff.

22 Q. But that would have been all in 2007,  
23 towards the end of that investigation, or that file  
24 at least?

25 A. Yes, sir.

1 Q. So none from 2001, '02, that time period  
2 that you recall?

3 A. Not that I recall, no.

4 Q. In your investigation of the 2001 murders,  
5 did you learn that there had been videos taken of the  
6 two crime scenes, the two cells where the two murders  
7 occurred?

8 A. I've seen photographs, but I don't believe  
9 I've seen a video.

10 Q. If we could pull up Bates stamp page 90.  
11 Do you see that this is a report concerning the Garza  
12 murder?

13 A. Yes, sir.

14 Q. Do you see in the second to the last  
15 paragraph, "I began progressing the scene by  
16 videotaping the cell's location." And the videotape  
17 being described as going through the cell's interior,  
18 et cetera?

19 A. Yes, sir.

20 Q. In your collection of evidence did you ever  
21 locate that video?

22 A. I have not seen a video of footage of the  
23 cells, and the FBI does not have that video based on  
24 the material I've reviewed.

25 Q. You would look at the video of the crime

1 scene in your investigation if you had it?

2 A. Yes, sir.

3 Q. If we can look at page 94. And is this for  
4 the investigation of the other murder scene?

5 A. Yes, sir.

6 Q. The fourth paragraph down, do you see where  
7 it says that the second crime scene was videotaped?

8 A. Yes.

9 Q. And in your collection of materials on this  
10 case did you ever locate that videotape?

11 A. Am I missing it? I think he just took  
12 photos.

13 Q. It says "Agent La Cuesta videotaped the  
14 scene."

15 A. I'm sorry. Yes, it does. I have not seen  
16 that, no.

17 Q. And the reason you'd want to review those  
18 is to see if it gave you some clues as to what  
19 happened?

20 A. Yes.

21 Q. Do you know what happened to those  
22 videotapes, or the videotaped evidence? I don't know  
23 if it was digital or actual videotape back then,  
24 but --

25 A. No, not exactly. But I want to be very

1 candid with you. The State Police has recently  
2 delivered some evidence to us that I need to review.  
3 And they've also represented that -- if I heard the  
4 sergeant correctly, they're still trying to locate  
5 some. And so to answer your question again, very  
6 candidly, I still need to look through those  
7 materials. I have not yet seen them.

8 Q. Can you estimate the quantity of materials  
9 we're going to be receiving?

10 A. Well, they brought it in on a dolly, and I  
11 believe it's material that is in their reports. But  
12 again, I'm hesitant to tell you what's in there  
13 because I haven't cracked that open.

14 Q. Very well. So you don't know whether there  
15 is any videotapes in that crate or whatever it is  
16 that's on the dolly?

17 A. No, but it may all just be Adrian Burns  
18 stuff, too.

19 Q. Okay.

20 A. Because I've been sitting in here with you  
21 all, and I'm hesitant to dig into their evidence  
22 until I can get a good chain of custody and transfer  
23 it into mine.

24 Q. And as we're sitting here today, you don't  
25 know whether those videos -- well, to your knowledge

1 they don't exist anymore?

2 A. To my knowledge, I have not seen them.  
3 Whether they exist, I'm hesitant because, I mean, I'm  
4 physically going out and searching these locations so  
5 that I can answer these questions. I'm taking a team  
6 of agents. I described it earlier it's like serving  
7 a search warrant.

8 Q. For our purposes, if they're not in your  
9 hands, they're not in anyone's hands that's in this  
10 room?

11 A. I take responsibility for turning stuff  
12 over, and I have not turned those over to the U.S.  
13 Attorney's Office.

14 Q. Would you be able -- assuming that they're  
15 not to be found, is there any way you'd be able to  
16 tell us whether they existed in 2002, 2003, or any  
17 time all the way up to today?

18 A. Realistically, sir, I don't think so. I'd  
19 have to open a case on it. I'd probably have to get  
20 court orders and subpoenas and search warrants, and  
21 search buildings. So I don't see that happening.

22 Q. So if we were going to try to -- the reason  
23 I'm asking this, Agent, is we're trying to figure  
24 out -- the purpose of this motion is when certain  
25 evidence was lost or destroyed, whether it was when



1     there was an FBI investigation, or when it was just a  
2     state investigation. I take it you can't give us any  
3     information on where these tapes kind of fell off  
4     from being accessed?

5           A. I'm trying my best to, but no.

6           Q. Have you interviewed an individual by the  
7     name of Leonard Lujan?

8           A. I have.

9           Q. And prior to the interview with him, did  
10    you review his prior interviews, the ones that he had  
11    done with -- I think you said the previous agents and  
12    also State Police?

13          A. I do recall doing that with him in the  
14    library of one of the facilities with his attorney,  
15    yes.

16          Q. Do you recall in one of the interviews that  
17    Mr. Lujan indicated there was a videotape he was  
18    shown by Warden Tafoya that showed him out in the  
19    yard?

20          A. No. It may have happened. I just don't  
21    recall that portion.

22          Q. Would you like it if I could pull up a  
23    document to refresh your memory?

24          A. If you have more questions about it,  
25    probably.

1 Q. Okay. Could we go to page 262. Do you  
2 recognize this as a page from a transcript of an  
3 interview that Leonard Lujan had with Detective Rich  
4 Lewis?

5 A. Yes.

6 Q. And do you see where he discusses being on  
7 camera and video, and that was shown to him at around  
8 the time of the murders, or actually after the  
9 murders it would be. If you need to scroll down, let  
10 us know.

11 A. Thank you. That's good.

12 Q. Okay. In your investigation did you ever  
13 obtain any videotape from the yard that was  
14 preserved?

15 A. No.

16 Q. Did you investigate whether that prison  
17 there, Southern prison, had video cameras in 2001?

18 A. Yes.

19 Q. And what did you learn?

20 A. I talked to seven former Corrections  
21 officials that worked there at that time. Six of  
22 them told me there were no cameras. One gentleman  
23 thought they had cameras, but they were live only,  
24 that they didn't record.

25 Q. Is that for the pods or for the whole

1 prison?

2 A. Prison-wide.

3 Q. No individual cameras at all?

4 A. Six out of seven said none, and one thought  
5 we might have had cameras, but they were just live,  
6 like they didn't record.

7 Q. Were you here when Mr. Lujan testified this  
8 week?

9 A. Yes.

10 Q. And did you hear him -- I think it might  
11 have been him who said that individuals from the  
12 Department of Corrections would be on the roofs  
13 taking photographs down below. Did you hear that?

14 A. Yes, I think so.

15 Q. Did you find a collection of photos that  
16 were taken from the Department of Corrections  
17 officials in that time period?

18 A. Not like you're describing. The only  
19 photos that I have, or have come across, are in the  
20 STG files. Or in some cases, I'll just say STIU  
21 officers have had them. They seem to be more  
22 ground-based, where the guys are posing together.  
23 That's the only kind of photos I've seen. I've not  
24 seen a rooftop-type photo.

25 Q. In any of your review of discovery or any

1 kind of materials, have you ever come across  
2 information that that was a practice of Department of  
3 Corrections at Southern in 2001?

4 A. No.

5 Q. I think Mr. Lujan also said they would take  
6 rooftop video down below. Do you recall that?

7 A. I don't. But if they did, I've not seen  
8 anything like that.

9 Q. And you haven't seen any reports that such  
10 a practice existed back in 2001; is that correct?

11 A. Correct. And to be clear, Mr. Castle, when  
12 I asked about cameras in the facility, I didn't just  
13 say wall-mounted, I was asking about the existence of  
14 videos, period.

15 Q. Top to bottom?

16 A. Yes, sir.

17 Q. Did the investigating officers in 2001  
18 conduct examinations of inmates in the two pods where  
19 the murders occurred to see whether inmates showed  
20 physical signs that they'd been involved in a  
21 struggle?

22 A. In some cases, yes.

23 Q. Well, do you recall that they did it with  
24 regards to all the inmates in the two pods where the  
25 murders occurred?

1           A.     Based on my review of the material, again,  
2     from your Touhy letter, I'm not seeing that all of  
3     the inmates were reviewed.

4           Q.     If we could go to page 18961. About  
5     two-thirds down, do you see here where -- it starts  
6     here. Well, actually, "Inmates assigned to P 1  
7     green," and then if you could read down below that?

8           A.     Yes, sir. I agree with you, Corrections is  
9     saying they did it. What I'm saying is I don't see  
10    the results of it consistently.

11          Q.     So they said photos were taken of any  
12    injuries identified and secured as evidence. Did you  
13    ever get those photos?

14          A.     I think we have a few in discovery, but  
15    definitely not for everyone, based on my going  
16    through the material.

17          Q.     And do you know what happened to those  
18    photos?

19          A.     No, sir.

20          Q.     Do you recall that, at least in one report,  
21    it indicated that Allen Patterson did have some  
22    injuries?

23          A.     Yes, and I've seen some photos.

24          Q.     You said the photos are in evidence?

25          A.     Yes, sir. I wrote the Bates numbers down.

1 Polaroids of Patterson, I wrote, start at 19441.

2 Q. So do you have the actual Polaroids, or  
3 just a xerox copy of them?

4 A. I'm not sure. I'd have to get back to you  
5 on that. The quality of the photocopies is decent,  
6 so maybe we have the originals.

7 Q. I'll do some searching.

8 A. I'll pull it up as well. I don't think  
9 that we have the originals.

10 Q. If I could, let me show you what I have.

11 A. Sure.

12 Q. Is that what you're referring to, page  
13 19441?

14 A. Yes, sir.

15 Q. Can you make out the injuries at all that  
16 they're talking about?

17 A. That's not very good picture quality.

18 Q. I know you're not a forensic pathologist to  
19 be able to look at injuries and determine what the  
20 cause of them are or age or anything of that nature.  
21 But would you be surprised if such an expert could do  
22 that based upon a photocopy like that?

23 A. I'd be pretty impressed.

24 Q. You didn't collect the Polaroids; is that  
25 right?

1           A.    I'd like to get back to you on that. Based  
2   on the -- looks like they already had hole punches in  
3   them and stuff, I'm thinking we probably didn't. I  
4   can't say for certain, though.

5           Q.    Assuming they no longer exist, and assuming  
6   that the defense has gone over and looked at the  
7   physical evidence that's been collected and kept by  
8   the State Police, would you be able to tell us  
9   that -- when those actual Polaroids might have been  
10  lost or misplaced?

11          A.    No.

12          Q.    And do you know whether those actual  
13  Polaroids ever made it into FBI custody prior to you  
14  being on this case in 2015?

15          A.    I don't believe they have, but I can't say  
16  for certain. They were contained within the  
17  materials we got from the Corrections Department.

18          Q.    Polaroids like that are actual physical  
19  items of evidence; is that right? Would they be kept  
20  as physical items of evidence?

21          A.    I would.

22          Q.    And so if Agent Armijo, between 2001 to  
23  2008, came into possession of them, we wouldn't know  
24  where they are unless we contacted him?

25          A.    True. However, when his case was closed,

1 as is the practice, if he's closing the case and no  
2 one is getting prosecuted, they may not have been  
3 retained.

4 Q. He didn't close the case; I think you said  
5 Agent Roundy adopted it?

6 A. And then that one got closed, and he opened  
7 up a new one. So it's difficult to say. I just want  
8 to make sure I'm being real candid with you what the  
9 practice is.

10 Q. In the investigation of the 2001 murders,  
11 was there evidence developed that indicated Ray  
12 Molina may have been involved in the murders?

13 A. There is some informant and early informant  
14 and inmate statements to that effect.

15 Q. Were you done? I'm sorry, I didn't mean to  
16 cut you off.

17 A. You said "evidence," so the answer is no,  
18 but there were some early-on statements.

19 Q. Okay. So there had been some information?

20 A. Yes.

21 Q. Any information that Ray Molina was an  
22 enforcer for the SNM? Do you recall that?

23 A. Every one of these guys at one time or  
24 another says they're an enforcer. I don't know.

25 Q. Do you recall in your investigation -- I



1 think it came up earlier -- that there had been a  
2 black shoelace that was fashioned into a noose that  
3 was found in inmate Martin Chacon's cell? Do you  
4 recall that?

5 A. Yes.

6 Q. Have you been able to locate that --

7 A. No.

8 Q. -- evidence?

9 Do you recall an individual that was at the  
10 Southern facility in 2001, at the time of the  
11 murders, by the name of Jesse Ibarra?

12 A. Yes.

13 Q. Was he a Mexican national?

14 A. I don't recall.

15 Q. Have you interviewed him?

16 A. No.

17 Q. Do you recall that there was evidence -- I  
18 think you now identified it as from Jimmie Gordon --  
19 that said -- where Mr. Gordon overheard Mr. Ibarra,  
20 Leroy Lucero, and Eugene Martinez talking about  
21 assaulting other inmates shortly before the murders?

22 A. Yes.

23 Q. And also in that -- I think by that same  
24 source, Mr. Gordon, indicated that Mr. Ibarra and Mr.  
25 Lucero were part of the board at Southern. Do you

1 recall that?

2 A. I do.

3 Q. What did you take "the board" to mean? Is  
4 that the board of the SNM, kind of the ruling people?

5 A. Kind of. Yes, his understanding of that.  
6 I think -- I think Lucero was a llavero. I think he  
7 was a key holder. I think he had influence.

8 Q. Somebody who could call shots?

9 A. Yes.

10 Q. And he had that power until he left the  
11 facility; is that right?

12 A. To some degree.

13 Q. He left the facility three days before the  
14 murders; is that right?

15 A. Yes.

16 Q. And I think -- well, in your view of the  
17 reports from 2001, did you find that facility  
18 logbooks and daily logbooks were collected for the  
19 day of the homicide and the day before the homicide,  
20 or homicides?

21 A. There are a lot of daily logbooks in there.  
22 I'm not sure if they cover both days.

23 Q. Were you able to locate all of the logbooks  
24 that were collected?

25 A. I think I know what you're asking. And I

1 am unable to collect anything that wasn't preserved,  
2 if that makes sense. Corrections doesn't have it  
3 anymore.

4 Q. Right. In your view of what was preserved,  
5 did it appear to you that everything had been  
6 preserved?

7 A. Facility-wide, no.

8 Q. Such as, I think there was an Officer  
9 Pedraza who testified earlier in these hearings that  
10 he kept a daily log of movements and things of that  
11 nature. Do you recall that?

12 A. I'd have to look closer at them. There are  
13 a lot of logs in there. But based on the Touhy  
14 letter, I wasn't sure exactly what you were looking  
15 for. So I verified there are some there, but --

16 Q. We were looking for what was missing. So I  
17 don't think you can locate them.

18 A. I trust that you probably know what's  
19 missing. And I can't fill in those gaps.

20 Q. Did you find, in 2001, that the Department  
21 of Corrections were scanning and collecting mail that  
22 might be suspicious at all?

23 A. There is some evidence that they were doing  
24 that, yes.

25 Q. Did you find any that had been collected

1 and copied?

2 A. Yes.

3 Q. From that time period, time of the murder?

4 A. Depends on your definition of time period.

5 But I saw some all the way out as far as -- maybe  
6 three or four months later I think there is a couple.  
7 I read one this morning, again, while I was in here,  
8 I think was shortly thereafter.

9 Q. Do you recall there being a report where  
10 STG Coordinator Jim Moore indicated that information  
11 received through mail scans was able -- they were  
12 able to develop a source that was able to provide  
13 firsthand knowledge about inmate deaths at the  
14 Southern facility?

15 A. I think Moore and that crew back then did  
16 develop sources who had firsthand knowledge. But are  
17 you asking was it through the mail?

18 Q. Yes.

19 A. I'm not aware of that.

20 Q. I'll see if I can refresh your memory.

21 Page 725. Do you see what we're pointing out?

22 A. Sure. I think that's -- do you want me to  
23 comment on it, or just --

24 Q. Well, it's not a great sentence, I  
25 understand that.

1           A.     I mean, that's true today, isn't it? I  
2     mean, inmate deaths at the hands of the SNM are going  
3     to keep happening. What's changed?

4           Q.     Well, I understand. But did you find any  
5     mail scans in letters that discuss murders that were  
6     going to happen at Southern New Mexico Correctional  
7     Facility? Did you find any that was preserved as of  
8     April 9, 2001, when this note was written?

9           A.     No, I have not.

10          Q.     So whatever mail they're talking about  
11     doesn't exist at this point, at least in your  
12     possession?

13          A.     Correct.

14          Q.     Do you know whether Mr. Garcia's mail was  
15     scanned?

16          A.     Billy Garcia?

17          Q.     Billy Garcia's.

18          A.     I've seen letters to and from Mr. Garcia.  
19     None jump out as having to do with the two homicides,  
20     though.

21          Q.     How about from 2001?

22          A.     I don't believe so.

23          Q.     Phone calls were collected, or at least  
24     reviewed by the Department of Corrections, the  
25     recorded calls at the time leading up to and the day

1 of the murder; is that right?

2 A. They represent that, yes.

3 Q. Did you receive any discs, tapes, or  
4 anything of that nature where the phone calls were  
5 preserved?

6 A. No.

7 Q. Now, in your investigation, was Mr. Leroy  
8 Lucero interviewed this year?

9 A. Yes.

10 Q. Were you part of that interview?

11 A. I was.

12 Q. And during that interview did he talk about  
13 being on the phone prior to the murders with an  
14 individual by the name of Angel Munoz?

15 A. Yes.

16 Q. And did he indicate that during that phone  
17 call he discussed the murders that were going to  
18 occur?

19 A. Yes.

20 Q. So I take it you'd love to get ahold of  
21 that phone call?

22 A. I would.

23 Q. But it doesn't exist?

24 A. I've never seen anything like that. I only  
25 know about it from Mr. Lucero.

1 Q. That's the only person that confirmed that  
2 call existed?

3 A. Yeah, he's the only party alive still that  
4 was part of the phone call.

5 Q. Okay. I think he said it was a three-way  
6 call; is that right?

7 A. It was.

8 Q. Was it through his wife or girlfriend or  
9 anything like that?

10 A. No, I think it was another member who was  
11 on the streets.

12 Q. Okay.

13 A. You know the transcript better than me.  
14 I've got to go back and look at it. But I thought --  
15 he tells me who the guy was, but I thought it was a  
16 male.

17 Q. But not someone you've tracked down or  
18 anything like that?

19 A. The phone call? No.

20 Q. The third party.

21 A. No. I think this was before cellphones,  
22 too.

23 Q. Now, if we could go to Exhibit A. If we  
24 could go to Bates page 13866 of that, I think it's  
25 five pages after the first one here. I might be

1 wrong, but do you recall that as early as 2001, the  
2 Department of Corrections had agreed to make  
3 available to the FBI recorded phone calls of SNM  
4 members?

5 A. Yes.

6 Q. And did you find that the FBI followed up  
7 on the collection of those phone calls?

8 A. I don't believe they did.

9 Q. And actually in 2001, the Department of  
10 Corrections essentially said: We'll cooperate with  
11 the FBI fully, and provide whatever they need  
12 regarding the SNM investigation, including the 2001  
13 murders?

14 A. Correct.

15 Q. And the FBI didn't follow up on that? At  
16 least --

17 A. I don't believe -- yeah, I'm going to speak  
18 terribly about my agency, but I don't believe anyone  
19 really cared. I don't see the work put into the  
20 case.

21 Q. If we could go to the next page. Do you  
22 see paragraph 1 where they talk about all the things  
23 that should be collected like letters, calls,  
24 incident reports, prior prosecutions, et cetera,  
25 Corrections' records? Do you see all that?



1 A. Yes.

2 Q. Do you know whether the FBI followed  
3 through on that?

4 A. I don't believe they did.

5 Q. Because you don't find it in the files?

6 A. That, and in talking to the agents assigned  
7 to the team back then.

8 Q. Did you find a copy of this Exhibit A in  
9 the Southern Task Force's materials?

10 A. This document?

11 Q. The plan, the investigative plan.

12 A. I believe so. Isn't that how we have it?

13 Q. I have no idea.

14 A. They would had to have turned it over.

15 Q. I think we got it from Agent Pedersen.

16 A. And I gave him his file, so --

17 Q. He was at Central, not Southern.

18 A. Right. But I got all of the FBI files, to  
19 include from archives, and I have them now. And I  
20 gave Pedersen -- he was worried about responding to  
21 your subpoena, so I gave him those documents.

22 Q. Do you recall in your review of the  
23 materials that the personal data sheets of all  
24 inmates assigned to the pods when the homicides  
25 occurred were collected by Norman Rhoades of the

1 State Police?

2 A. Yes.

3 Q. Have you been able to see those, the ones  
4 that existed in 2001?

5 A. I think so, yes.

6 Q. You think you have those?

7 A. Those are what I'd call the escape flyers.  
8 Are we talking about the same thing?

9 Q. I don't know what --

10 A. Yes. And the reason I believe is Rhoades  
11 wouldn't otherwise be able to get all the  
12 biographical data that he puts on the first couple  
13 pages of his report without them. So I think they're  
14 in there.

15 Q. I want to the switch to informants that  
16 were developed over the years.

17 A. I have some notes on that, sir.

18 Q. So you can go ahead and access your notes.  
19 Were you able to identify the source at page 14210?

20 A. Yes.

21 Q. Who was that?

22 A. Augustine Saenz. Source 1A, is that who  
23 you're asking about?

24 Q. Yes.

25 A. Yes.

1 Q. And how were you able to determine that was  
2 Augustine Saenz?

3 A. I compared his statements: Being from the  
4 same neighborhood, the same gang; that he's not SNM.  
5 And then there is an FBI 302 -- I don't know what the  
6 Bates number is, but it's dated 7/18/2016 -- Saenz is  
7 interviewed by somebody on my team, and it matches up  
8 with this information. So I believe that that's who  
9 this informant is.

10 Q. If we could go to page 521 of discovery. I  
11 think you indicate you were able to determine who  
12 source number 1 was, but not 2, 3, or 4; is that  
13 right?

14 A. Correct.

15 Q. So specifically DFS #3?

16 A. Yes. I can tell you what's redacted, but  
17 that doesn't tell us who the source is.

18 Q. It's an identifier that they use; is that  
19 correct?

20 A. Yes, sir.

21 Q. So this is an informant that stated to  
22 Dwayne Santistevan that three or four days prior to  
23 the killings, Leroy Lucero was telling inmates in the  
24 compound they better get ready because the SNM was  
25 going to clean house; is that right?

1 A. Yes, sir.

2 Q. And Mr. Lucero was there at least four days  
3 before the homicides?

4 A. Correct.

5 Q. I think he might have been there for part  
6 of the third day before the homicides; is that  
7 correct?

8 A. Then I think he caught a bus to  
9 Albuquerque.

10 Q. He was released?

11 A. Yes, sir.

12 Q. And his job then was supposed to be to take  
13 over the SNM drug business on the streets?

14 A. It depends who you -- yeah, maybe.

15 Q. I guess there were many that wanted to take  
16 over the drug business on the streets?

17 A. Well, and -- I mean, I just say it like  
18 that because it depends whose version you believe.

19 Q. Were you able to determine who the  
20 informant was at page 1257?

21 A. Yes.

22 Q. And who was that?

23 A. Neri, N-E-R-I. Mostly because it says he's  
24 from New York; that's the only guy in the pod from  
25 New York. And then the information lined up as well.

1 Q. The inmate at page 27899?

2 A. I may be mistaken, but I don't think that  
3 was in the Touhy letter, was it? I'm happy to look  
4 at it, but I only researched the ones you gave me.

5 MR. BECK: No, it's not -- we identified  
6 this is the same report and a different version as  
7 that at Bates 606.

8 MR. CASTLE: Okay. Thank you.

9 Q. And 606 is who?

10 A. I have 605; I don't believe I have 606.

11 Q. Let's go ahead and pop 606 up. Well, this  
12 is the same page. Let's just go ahead and take a  
13 look at that?

14 A. This is Rosa's mysterious guy.

15 Q. Did you call him a mysterious guy?

16 A. I have trouble with this informant. I  
17 mean, most of the stuff he talks about is unfounded.  
18 I never see it again. So it's hard for me to tell  
19 you who this guy is because I'm ruling them out over  
20 the years against other people who have given  
21 statements. Where they match up, I can tell you who  
22 it is. But in Bates 605, this is largely stuff that  
23 is contradictory and unfounded.

24 THE COURT: Mr. Castle, would this be a  
25 good time for us to take a break?

1 MR. CASTLE: Could I just finish this  
2 particular exhibit?

3 THE COURT: That's fine. Go ahead.

4 Q. Let's look at this. It says here that the  
5 source indicated that the killings were ordered by  
6 Angel Munoz. Do you see that?

7 A. Yes. This is not a document you had me  
8 look at. I'm looking at 605. I thought we said it  
9 was the same as --

10 MR. BECK: 606.

11 A. I don't know what that is. That's not on  
12 the Touhy list. This is 606?

13 Q. It's the same as 606. We'll just pull up  
14 606 to be clear. You see this is a report drafted by  
15 Andrew Armijo?

16 A. Yes, sir.

17 Q. And this source, do you know who that is?

18 A. I do not.

19 Q. And is this information that you indicated  
20 was not verifiable, or was that in reference to 605?

21 A. My reference was to 605. I'm sorry.

22 Q. Okay. We're going to take a break now.

23 A. I'll look at this, sure.

24 THE COURT: Before anybody goes, let me do  
25 some speaking here. I'm going to do a lot of

1 speaking after the break so that we can use the rest  
2 of the afternoon to work. Before we leave today I've  
3 been working on this James chart which has now  
4 expanded into what we'll call the non James  
5 statement, these sort of five plus categories. So  
6 I'll probably put them all in the same opinion,  
7 because y'all used the James statement to be the  
8 target.

9 So I'm putting that together. It's not  
10 done. But why don't y'all talk, and you don't have  
11 to let me know now, whether you want to see what I've  
12 got. I won't file it. I'll simply pass it out to  
13 you and we can attach it to Ms. Bevel's court  
14 exhibits to her clerk's minutes, so we know what  
15 we're talking about. If you want to see what I'm  
16 doing, see the progress I've made, probably the first  
17 portion of it is pretty good, pretty tight. The  
18 further you get along, it's a little more ragged.  
19 I'm still working on it but it will show you where  
20 I'm going. So let me know after the break if you  
21 want it.

22 Second, I'm going to need to know by the  
23 end of the day what it is that you want me to work on  
24 when I leave for Albuquerque, that's going to help  
25 you get ready for trial. So if y'all would talk and

1 let me know. It doesn't have to be one thing, you  
2 don't have to agree, but just let me know what I can  
3 do when I leave here that would be most helpful to  
4 you.

5 And third, Mr. Benjamin, is that your son  
6 back there, or was that him?

7 MR. BENJAMIN: That is him.

8 THE COURT: Is he still around?

9 MR. BENJAMIN: I think he's in the  
10 conference room.

11 THE COURT: Well, I'm going to take a  
12 break. If he'd like to, Ms. Bevel can bring him up  
13 and he can sit in the seat, maybe give him a tour of  
14 the jury room.

15 And for those of you who want to take a  
16 look sometime, if you haven't done anything with  
17 JERS, Jury Electronic Retrieval System, you might  
18 want to take a look at it. And it may be that even  
19 the exhibits from the last trial are on there, so Ms.  
20 Bevel can maybe show you that, if you haven't,  
21 because we're going to use it for this trial as well  
22 and if you haven't seen it -- but tell him to come on  
23 up and sit in my seat, and tell him if he touches  
24 anything, he has to do the work, okay?

25 MR. BENJAMIN: There you go.



1 THE COURT: See you in about 15 minutes.

2 (The Court stood in recess.)

3 THE COURT: All right. Looks like  
4 everybody is back and every defendant is in the room  
5 and everybody has got an attorney. Look around, make  
6 certain.

7 All right. Let me go over a few things.  
8 One is let me see if y'all want the -- what I have so  
9 far, a draft of the James chart, and it will also  
10 pick up the other five, although it will probably be  
11 a separate chart, so you wouldn't see my work on  
12 that, because I haven't worked really much on that.  
13 Do the defendants, the Government, want to see it?  
14 Or do you want me to just wait and get the opinion  
15 out and look at it then?

16 MS. HARBOUR-VALDEZ: The defendants would  
17 like to see it, Your Honor.

18 THE COURT: Is that all right with you, Mr.  
19 Beck?

20 MR. BECK: Yes, Your Honor.

21 THE COURT: All right. So I will have  
22 either Mr. Hammond or Ms. Bevel make 10 copies; eight  
23 will go to the defendants, and the Government will  
24 get one, and then we'll attach one to the clerk's  
25 minutes as exhibit. Ms. Bevel, what will the

1 clerk's --

2 THE CLERK: Just call it Court's Exhibit 1.

3 THE COURT: Is this the first one for this  
4 hearing?

5 THE CLERK: I think it would be better if  
6 we call it Court's Exhibit 1.

7 THE COURT: All right. For this hearing it  
8 will be Clerk's Exhibit 1 -- Court's Exhibit 1. The  
9 first 12, 13, I've really had time to work on. The  
10 next 16 are a little ragged. So about a third. And  
11 then after that it's very spotty, it's a lot of  
12 blanks. But some of it is stuff that's come up  
13 during the hearing, and we've typed it in so we'll  
14 remember it, rather than having to review all the  
15 transcript. Although we'll probably get that done,  
16 even when we get that. So remember that it's a work  
17 in progress. But it will show you what I'm doing.  
18 And then, if you want to start shooting at it, you  
19 can. I know time is beginning to run out.

20 So send me letters, or however you want to  
21 communicate with me about what you disagree, or what  
22 you can kind of live with, expect it, or something  
23 like that.

24 When I leave here tonight, what is it  
25 that -- did y'all get a chance to talk about what you

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1 want me to work on, continue to work on?

2 MS. HARBOUR-VALDEZ: I'll take that.

3 THE COURT: Okay. Ms. Harbour-Valdez.

4 MS. HARBOUR-VALDEZ: We would like the  
5 Court to look at the bifurcation motion that was just  
6 filed. I know the Government probably hasn't  
7 responded to that yet. But we'd like you to look at  
8 that, as well as the motion that was filed earlier  
9 this week regarding the configuration of the  
10 courtroom.

11 I understand there is going to be a meeting  
12 in Albuquerque on Monday regarding the trial  
13 location. So we understand that some of those  
14 decisions may have to wait. But we'd obviously, for  
15 various reasons, like to know as soon as possible  
16 where we're going to be sitting and how we're going  
17 to be sitting.

18 THE COURT: Okay.

19 MS. HARBOUR-VALDEZ: Regarding -- did you  
20 want to know about future hearings, what we think is  
21 outstanding?

22 THE COURT: Well, I'll probably just leave  
23 that for another day. Y'all can talk to Ms. Bevel  
24 and Ms. Wild about future hearings, and what we're  
25 going to put there.

1           As far as heavy lifting, what do you want  
2 me to do? Continue to work on the evidentiary  
3 opinion?

4           MS. HARBOUR-VALDEZ: Yes.

5           THE COURT: Anything ahead of that?

6           MS. HARBOUR-VALDEZ: No one told me  
7 anything else.

8           THE COURT: All right. Does that seem to  
9 be where you are, too, Mr. Beck?

10          MR. BECK: Yes, Your Honor.

11          THE COURT: The thing I can do that will  
12 help y'all most get ready for trial is to finish out  
13 that -- I'll call it James/probably statement against  
14 interests opinion.

15          MS. HARBOUR-VALDEZ: Yes, Your Honor.

16          THE COURT: I'll continue to work on that.  
17 All right.

18          MS. HARBOUR-VALDEZ: Your Honor, one more  
19 thing on the radar, some of us have already had  
20 travel approved to come down here on March 26. So if  
21 we have follow-up hearings, it would be great if we  
22 could tie them in that week so that we all don't have  
23 to get another round of travel logs.

24          THE COURT: Yeah, don't hold your breath on  
25 that. Ms. Wild told me that if I did need to come

1 back down here, it was most likely going to be that  
2 last week, which would be the week of the 2nd, 3rd,  
3 4th and 5th. So I will not be available on Friday.  
4 So I will -- one of my very first law clerks is being  
5 sworn in as a Court of Appeals Judge in Arizona.

6 MS. HARBOUR-VALDEZ: Nice.

7 THE COURT: So the Governor has appointed  
8 her there, so I'm going to go over there and speak at  
9 her investiture. So I'm not be available on Friday,  
10 but those four days were what Ms. Wild had indicated  
11 to me were the most likely. But y'all can talk to  
12 her about that.

13 MS. HARBOUR-VALDEZ: Yes, Your Honor.  
14 Thank you.

15 THE COURT: All right. Let me talk about a  
16 few other things that I have thought about today as  
17 we have heard evidence. Let me talk a second about  
18 Leonard Lujan. Two things about him: One is that if  
19 you will look at the conspiracy chart that was  
20 created on Tuesday or Monday, whenever Mr. Castellano  
21 did it, everybody that is in the indictment is a  
22 defendant in this case or a fugitive, with the  
23 exception of Leonard Lujan. And there is no evidence  
24 of anybody else that has been introduced in this case  
25 for a conspiracy other than his plea agreement. So I

1 have been focusing this week on the statements  
2 themselves and the chart. But before I get to that  
3 chart, I've got to make findings of fact as to a  
4 conspiracy existed and who is in that conspiracy. I  
5 have not studied the plea agreement to figure out if  
6 all the people that were identified by Mr.  
7 Castellano -- and there were six unindicted people  
8 that were listed -- so there would be a total of 11  
9 in that conspiracy, but the problem I'm having now is  
10 given the letter that we've seen from Mr. Burkhead,  
11 I'm pausing about whether I can find by a  
12 preponderance of the evidence that a conspiracy  
13 existed, and who is a member of it. Because all I've  
14 got is his plea agreement.

15 And I've got a letter from the U.S.  
16 Attorney's Office indicating that he is incredible,  
17 so -- and unreliable. So I'm pausing whether I can  
18 now -- I'll go ahead and make my chart, but I don't  
19 know where the evidence is for me to establish, A,  
20 that a conspiracy existed on Count 1, or who are the  
21 members of that conspiracy. And it would seem that  
22 that letter may come into evidence, so -- as an  
23 admission, party admission. So I think we're on  
24 shaky ground right now as to the co-conspirator  
25 statements that, at least on the record that I

1 have -- now, it may be that, you know, there are  
2 other people that are listed in the conspiracy, like  
3 Angel Munoz and Leroy Lucero and Frederico Munoz,  
4 some other people, but, you know, I -- that might be  
5 able to salvage the case. But anyway, there is a  
6 problem there. So as I work toward finalizing the  
7 opinion, I can continue to work on the chart, but I  
8 may have to go back, and it may get more difficult  
9 to, in the end, find the essential elements of  
10 conspiracy and who was a member of the conspiracy.

11 As far as Counts 4 and 5 as to Adrian  
12 Burns, like I said, I'm still in the middle of this  
13 chart. And it may be that there is a quick answer  
14 for this. But nothing has been introduced, that I  
15 know of, as to a conspiracy on 4 and 5. Now, it may  
16 not be a problem because there may be no statements  
17 on 4 and 5. And so, if that's the case, it's a  
18 phantom problem. But I just point it out because, as  
19 I work through the chart, if I run across any  
20 statements there, I don't have any evidence of a  
21 conspiracy, or who the members of the conspiracy are,  
22 other than the representations of Mr. Castellano. So  
23 I'm without evidence on that. But it may be it's not  
24 a problem.

25 As to the document that was filed by the

1 Government last night or this morning, I know, Mr.  
2 Beck, you said that it had fallen between the cracks;  
3 it was something that Mr. Castellano had committed  
4 to. But I think I'm going to have to just say for  
5 purposes of the James hearing, I'm going to ignore  
6 it. I don't think the Government put much effort  
7 into it, so I'm not sure I ought to put much effort  
8 into it, or the defendants ought to put much effort  
9 into it.

10 We agreed that we were going to identify  
11 additional statements by the end of the day on  
12 Wednesday, I think it was. And this came down either  
13 last night or this morning. And it just simply  
14 identifies all that was in the first trial. And like  
15 I said, I don't see how any of those -- none of the  
16 standards for the James hearing can be satisfied by  
17 what we did in the first trial. They're different  
18 conspiracies, there is different members. And it  
19 requires an entirely new evaluation. I don't see how  
20 it can be used against these defendants.

21 So, for the present time -- and you'll  
22 probably see this in the opinion -- I'm just going to  
23 not evaluate those, and I will exclude those from  
24 trial. If the defendants want -- if the Government  
25 wants to come back belatedly and try to insert new



1 James statements in, it can do so, but I'm not going  
2 to consider that document for trying to figure out --  
3 I'm not going to go through each one of those  
4 statements and try to figure out if they should come  
5 in. So they will not appear on the chart. And I'm  
6 just going to exclude all that evidence. And if you  
7 want to come back and try to get some of those  
8 statements in, then I'll take a look at it.

9 Let me just see if I can read my notes  
10 here. It might be good for the defendants to  
11 consider sending me -- I know -- in your motions to  
12 dismiss you have a chart of what evidence you don't  
13 have. It seems to me that you're picking up some  
14 evidence, and that chart needs to be maybe modified.  
15 Give it some thought. I'm certainly not ordering it.  
16 But it may be wise for you to look at that chart and  
17 tell me what's still in and what's still out. It  
18 seems to me that we made some progress in identifying  
19 some things. And it might be helpful to me before I  
20 sit down and start working on that opinion to have  
21 your latest and best offer as to what you think you  
22 don't have, and what your prejudice portion is.

23 I will say this: I don't have a great  
24 inclination to change my opinions earlier about the  
25 motions to dismiss. And I don't think that probably

1 I'm going to be in any position to grant those  
2 motions to dismiss before trial. So I think we're  
3 looking at a trial. But those motions to dismiss may  
4 be an ongoing work and project for me as I get closer  
5 to trial, and during trial, and maybe even after  
6 trial.

7 But I will say this: That I have been  
8 impressed as I have looked at the documents here,  
9 that there may be more meat on the bones than I was  
10 giving the defendants that filed those motions credit  
11 for by looking at their motions. It seems to me that  
12 the defendants have, with the hearing, made their  
13 case a little stronger than what I had perceived from  
14 the papers.

15 All right. I have been alerted about the  
16 bifurcation motion, and I will take a look at it.  
17 But don't hold your breath. I think I'm sort of  
18 locked into, you know, trying to get us to the  
19 promised land with the defendants that we have.

20 Configuration: I will still work -- I  
21 talked to Ms. Wild, and we do not have anything  
22 better right at the present time. I'll certainly  
23 look at your pictures and things. I need to study  
24 your motion. But I don't have anything better at the  
25 present time. So we'll continue to look at the

1 possible arrangements.

2 I guess at the present time -- you know,  
3 I've been up here paying lots of CJA vouchers, I  
4 guess I think it may be a little bit late to  
5 unscramble being down here. So I do appreciate Ms.  
6 Harbour-Valdez sort of giving me till Monday, because  
7 I do want to meet with some people up there, and get  
8 some more information and input. But I think for the  
9 present time, I certainly have seen that,  
10 particularly on the defense side, where I'm looking  
11 at CJA vouchers, that a lot of you have made some  
12 fairly significant efforts to plan. And so I want to  
13 be sensitive to not throwing y'all into turmoil.

14 And it may just be that what I can do in  
15 this space over here is about what I can do in the  
16 Rio Grande courtroom. It may be that I can't change  
17 a whole lot. So at least for the present time, I  
18 think I'm planning to be down here, and you probably  
19 can plan to be down here as well, just because I  
20 don't want to really upset the defendants' plans,  
21 which I have seen are quite considerable.

22 Now, I've seen some of them kind of being  
23 thrown in turmoil by Ms. Waters and some others, so  
24 it may be that it's not as difficult to unscramble,  
25 and that's one thing I want to look at over the

1 weekend, is exactly what y'all's plans are. And if I  
2 feel like I'm throwing you into turmoil, I don't want  
3 to do that. You've got enough things to think about,  
4 rather than where you're going to be. So for the  
5 present time plan on being here, continue to make  
6 your plans. And chances are what I'm going to learn  
7 up in Albuquerque early next week is not going to  
8 change things. But I do think I owe it to a lot of  
9 different levels of the court, who have worked very  
10 hard to make what we do here work. I owe it to them  
11 to listen and talk, stuff like that. So if you'll  
12 give me that much of an out, I'd appreciate it. But  
13 for your planning purposes, I'm continuing to sign  
14 CJA vouchers. So I think I know that we're going to  
15 be down here.

16 If you would like to speak on anything I've  
17 said, or anything like that, you're welcome to do so.  
18 if you want to pick up Mr. Acee, again, we can go.

19 Ms. Harbour-Valdez.

20 MS. HARBOUR-VALDEZ: Your Honor, I spoke  
21 with Agent Acee at the break about the dolly of  
22 evidence that he referenced.

23 THE COURT: He didn't say that. I didn't  
24 hear that. There is no dolly of additional evidence.

25 (Laughter.)

1 MS. HARBOUR-VALDEZ: We all heard it. He  
2 anticipates that he might have an answer by Tuesday  
3 to Ms. Armijo on what it contains. So if we could  
4 have at least until Wednesday to update that chart,  
5 we would certainly appreciate that.

6 THE COURT: Oh, certainly. That's really  
7 optional on your part. I thought it might help your  
8 motion if it was accurate. So, yeah -- I mean -- and  
9 don't kill yourself on that, because, as you can  
10 tell, I'm just -- after a week here, I'm only about a  
11 third on those James charts. And if that's my  
12 primary task, then it's going to take a while.

13 When you get the chart, it will not look  
14 this way probably in the opinion because I'm going to  
15 probably paginate and turn around a little bit more,  
16 and you'll receive an opinion, and it may be  
17 formatted differently. I need to -- I've been  
18 reading the defendants' objections, but as you know,  
19 a lot of those were boilerplate. And I've been  
20 trying to pick out the ones that are specific. But I  
21 need to probably do something to indicate to the  
22 reader where it's boilerplate, where it's specific.  
23 So when you see this chart, it may be formatted  
24 differently in the opinion when I get it out. This  
25 is a draft chart. So don't kill yourself on that,

1 because unless you tell me the motions to dismiss --  
2 but I don't think we probably ought to go there. I  
3 think we've got to get ready for trial. So I think  
4 you're making the right choice by sending me back  
5 working on the evidentiary issues.

6 MS. HARBOUR-VALDEZ: Okay. Thank you, Your  
7 Honor.

8 THE COURT: All right. Ms. Torraco first,  
9 then I'll come back to you. Ms. Torraco.

10 MS. TORRACO: Thank you, Your Honor.

11 I just briefly want to address the very  
12 exciting topic of this dolly. And I want to put it  
13 in terms of we've asked you to take a look at the  
14 bifurcation motion, which Mr. Andrew Gallegos and  
15 Mr. Joe Gallegos have opposed, because we're still  
16 rooting for severance. But with the --

17 THE COURT: Maybe I missed something.  
18 What's the difference between bifurcation and  
19 severance? I guess I've been lumping those in. Is  
20 somebody making a real distinction between those?

21 MR. CASTLE: Yes, Your Honor. I'm talking  
22 of bifurcation in the context of, we seek one jury;  
23 we tell them there is going to be two portions to the  
24 trial. And we try Counts 1 through 3, and 13 through  
25 16. We tell them that Mr. Andrew Gallegos is here

1 and participating in the first trial, but there is  
2 not going to be a verdict on him in the first part of  
3 the trial. We finish, we get a verdict. And then  
4 you put Counts 4 and 5, the evidence on 4 and 5,  
5 instruct the jury that they can take into account all  
6 the evidence in the first trial in the second part of  
7 the trial. And we get verdicts. That would allow us  
8 to have one jury, one proceeding. The Government  
9 would have not to duplicate its evidence concerning  
10 enterprise, but still, for the defendants in those  
11 other counts, the prejudicial damage from the 4 and 5  
12 counts --

13 THE COURT: So it's the first group that's  
14 not prejudiced, not the second group?

15 MR. CASTLE: The second group is charged  
16 with 4 and 5. So the prejudice that would inure, I  
17 think, under the law, if the Court is going to  
18 proceed and allow federal jurisdiction to try that  
19 case, that's not unfair prejudice under the concept  
20 of 403, and things of that nature. It's prejudice  
21 from the alleged acts that they're saying you did.

22 So that's the concept that I have proposed  
23 for the Court. And normally we see it in cases where  
24 there is a gun aggravator that there needs be a jury  
25 finding with. But I think that same process could

1 work, and still provide the efficiencies to the  
2 Government and to the Court. I think the only thing  
3 you would add is an additional opening or additional  
4 closing argument. There wouldn't have to be any  
5 other evidence.

6 THE COURT: Okay. Before you speak, Ms.  
7 Torracco, or I'm going to forget it: I have pulled  
8 out of your targeted response to the James motion,  
9 Mr. Benjamin, your argument about this jurisdictional  
10 issue. Mr. Castle just mentioned it. Is that  
11 circulating? All right.

12 (A discussion was held off the record.)

13 THE COURT: All right. We're about to send  
14 an email to Ms. Bevel, and you're about to receive an  
15 opinion here quickly on those issues. So I pulled  
16 that out because I was interested in them. Anytime  
17 people say "jurisdiction," my ears perk up. So  
18 you'll get an opinion on the three arguments you  
19 raised about that, one of which is jurisdiction.

20 MR. BENJAMIN: Thank you, Your Honor.

21 THE COURT: I didn't know it was -- where  
22 it was. We meant to get it out this morning. But I  
23 knew it hadn't gotten out, so I wanted to tell you  
24 it's coming out so you can be on the lookout.

25 MR. BENJAMIN: I appreciate that.



1 THE COURT: All right. So I understand  
2 now. You just want severance, you don't want this  
3 bifurcation?

4 MS. TORRACO: Right. But I wanted to bring  
5 up the fact that we have just been informed, just  
6 learned that there is more information going to the  
7 FBI that is most likely related to the Adrian Burns  
8 matter. And I'm concerned about my ability and my  
9 co-counsel's ability to go through what's been  
10 described as a dolly. And I can only think that if  
11 the Court is one-third of the way through the James  
12 chart, you can imagine how much work that we have  
13 when we finally get the rest of the Adrian Burns  
14 information. So when you're looking at the fact that  
15 we're about to get another huge discovery dump, for  
16 lack of a better term, I do believe that goes to the  
17 severance motion.

18 Thank you, Your Honor.

19 THE COURT: All right. I guess my  
20 inclination is, let's see what's in the dolly, or the  
21 materials before we change course. Ms. Armijo?

22 MS. ARMIJO: Your Honor, I don't think it's  
23 a big mystery as to the dolly. Defense counsel for  
24 Mr. Joe Gallegos asked to see the evidence. We made  
25 inquiries with New Mexico State Police as to where

1 the Adrian Burns evidence is. We told them that the  
2 defense wanted to see it, since Agent -- I guess he's  
3 Sergeant Williamson, the former case agent, was  
4 coming down to Las Cruces, he brought the evidence  
5 from the Burns murder down here, and turned it over  
6 to the FBI. And so that was at the request of the  
7 defense to view it, to make it easier. Mr. Benjamin  
8 is in El Paso. So that is the evidence that's here.  
9 I informed Mr. Benjamin about it, and it was turned  
10 over to the FBI. So I don't believe there is going  
11 to be a big dolly of new evidence. It's just the  
12 evidence from the Burns case.

13 MR. BENJAMIN: I appreciate that, because  
14 that wasn't how we understood the statement. We  
15 understood it to be documents, not handcuffs and  
16 stuff like that.

17 MS. ARMIJO: I think the new dolly is the  
18 evidence in the Burns case turned over to the FBI,  
19 and they've already been talking to them about  
20 viewing this evidence this Friday.

21 So this is not a "Joe Sainato new box of  
22 evidence coming in." This is the evidence from the  
23 New Mexico State Police to the Burns murder, Your  
24 Honor.

25 THE COURT: So we're always going to refer,

1 the rest of our lives, to "the Joe Sainato box."

2 Well, if we didn't have war stories, right, we

3 wouldn't have much of a life, would we?

4 MR. CASTLE: Up there with Al Gore's box.

5 THE COURT: I don't want to make any  
6 rulings on any motions until we get a feel for what's  
7 in the dolly, the boxes.

8 All right. Anything else before we resume?  
9 Mr. Castle?

10 MS. ARMIJO: Your Honor, the only other  
11 thing I would add is in reference to the James  
12 statements, we would ask you to consider -- I believe  
13 we put more than one plea agreement in, like we did  
14 last time. Mr. Castellano put, I think, several plea  
15 agreements in.

16 THE COURT: He did, but none of them were  
17 people that were -- I think, we looked at this during  
18 our lunch hour. None of them relate to the Castillo  
19 murder, Count 1. So --

20 MS. ARMIJO: That may be true. That may be  
21 true. But we would also ask you to take into  
22 consideration, as far as the Garza, Frederico Munoz'  
23 testimony today.

24 THE COURT: Whose?

25 MS. ARMIJO: Frederico Munoz, when he came

1 in and he testified about his conversation with Billy  
2 Garcia, and he indicated that he had wanted Mr. Garza  
3 killed as well, and that his concern was as to  
4 Mr. Garza. But I believe his testimony referenced  
5 both murders.

6 THE COURT: I think you're okay on Garza.  
7 If you've got some pages on Castillo, you might get  
8 with Ms. Bean, and pull those out and send them to  
9 me. Because I think with Garza you still got, don't  
10 you have Eugene Martinez' plea agreement in there?

11 MR. BECK: Right.

12 THE COURT: So I think you're okay on his,  
13 because of that plea agreement.

14 Now, here's the thing I don't know about  
15 any of these, I just haven't had time -- and be  
16 cautious. I do work faster than one-third of the  
17 James agreement, Ms. Torracco. I've had some other  
18 things going on this week --

19 MS. TORRACO: I'm sorry.

20 THE COURT: -- as Mr. Benjamin will find  
21 out in a few minutes, he's got another opinion. So  
22 I've been working on some footnotes for Shauna  
23 Gutierrez. So I've been doing some other things. So  
24 I think -- the only reason I say that is I think I  
25 can pick up speed.

1 MS. TORRACO: I didn't mean that.

2 THE COURT: No, I didn't take it that way.

3 MS. TORRACO: I didn't mean it in a  
4 disparaging way.

5 THE COURT: I didn't take it that way. The  
6 only reason I said it is I think I can pick up speed.  
7 But I have been looking back at these two. And I was  
8 going to say to Mr. Beck what I'm concerned about is,  
9 I'm not sure that these plea agreements are going to  
10 give me all the co-conspirators that Mr. Castellano  
11 said.

12 So what you may get is you may get findings  
13 of fact at the beginning of the opinion that will get  
14 you a conspiracy, although I'm concerned about Count  
15 1, and I'm concerned about Counts 4 and 5. But that  
16 may not be a problem, if there is no statements. And  
17 I haven't run across any yet. But it's not going to  
18 pick up all these other conspirators. So if you are  
19 going to go to trial, and these people are going to  
20 testify, or you're going to try to get their  
21 statements in, there is a gap. I may have to say: I  
22 don't have any evidence of that. Do you see what I'm  
23 saying?

24 MR. BECK: I do. And I think we can -- I  
25 mean, to the extent that that evidence doesn't come

1 in through the chart of James statements, through Mr.  
2 Lujan's plea agreement, I think it will come in at  
3 trial, through the testimony of other witnesses  
4 before any of those statements are offered.

5 THE COURT: Well, I think I'm going to have  
6 to put pressure on the Government to give me  
7 something in advance of that. I think you're going  
8 to have to supplement this record in some way.  
9 Because it's not only a problem on 1, it's a problem  
10 on 2, it's a problem on Freddie Sanchez as well, and  
11 it's a problem on -- well, those are the big  
12 problems. On 1 it's fatal right now; 2 and 3, I just  
13 don't know. I'll have to study the plea agreements.  
14 But I'll bet you they don't mention every name that  
15 Mr. Castellano mentioned.

16 MR. BECK: Right. And I'll take a look at  
17 that. I think we've got -- I think that they're  
18 identified in the other statements by Mr. Lujan.  
19 That would be my expectation as to why those folks  
20 are identified as co-conspirators, because they're  
21 identified in Lujan's statements or in conversations  
22 with other co-conspirators.

23 THE COURT: But I don't recall -- and  
24 correct me if I'm wrong -- that Ms. Stemo gave us any  
25 evidence on the co-conspirators. She gave us

1 information on the co-conspirator statements. Do you  
2 see the difference I'm making?

3 MR. BECK: I do. And I think the  
4 co-conspirator statements tied up who was in the  
5 conspiracy. And so I'll have to go back and look at  
6 who maybe was left out there. But I'll go back and  
7 take a look at that.

8 THE COURT: All right.

9 MR. BECK: I think that -- I mean, I  
10 think -- I think the Court had a chance to see Mr.  
11 Lujan yesterday. And to the extent that the Court  
12 may be entertaining the idea that Mr. Burkhead's  
13 letter somehow disqualifies him as a witness, I think  
14 if we take a close look at Exhibit R, we'll see --

15 THE COURT: I guess I'm more thinking that  
16 it doesn't disqualify him as a witness. But the  
17 letter may come in as an admission of a party  
18 opponent, so it's going to be evidence against him.  
19 But I think right at the moment what concerns me is  
20 that's all I have. And I guess I'm pausing about  
21 whether I can find by a preponderance of the  
22 evidence, just based on him, without any  
23 corroborating evidence at all.

24 MR. BECK: Well, I think -- I mean, I think  
25 to the extent that this letter is -- it's in

1 reference to a different motion. It's not in the  
2 James evidence.

3 THE COURT: It's not. But I guess we're  
4 all kind of -- we've got a bit of a stand-off here.  
5 If I allow the defendants to sort of supplement the  
6 record with Mr. Burkhead's letter, which I bet they  
7 will want me to do, I'm probably going to let you  
8 supplement the James record --

9 MR. BECK: Understood.

10 THE COURT: -- to fill in these problems.

11 MR. BECK: Understood. I will --

12 THE COURT: Am I presuming too much on the  
13 defendants? Do y'all want me to consider the  
14 Burkhead letter as part of your James record?

15 MR. BURKE: Yes, Your Honor. And if it  
16 would have been produced in a timely fashion, it  
17 would have been attached to the motion to dismiss as  
18 well.

19 THE COURT: So I guess I feel like I  
20 probably need to let them, if they want to. Since  
21 we're supplementing the record, they'll have less  
22 reason to object to your supplementation.

23 MR. BECK: Anticipating that was the case,  
24 that's why I think it would be wise to look closely  
25 at the letter from Mr. Burkhead. It says -- in the



1 second paragraph, it says, "That a federal  
2 prosecution of these homicides would in large part  
3 hinge on the testimony of former SNM member Leonard  
4 Lujan. Unfortunately, Mr. Lujan's credibility is in  
5 serious doubt." So that is -- I mean, that is not  
6 Mr. Burkhead's -- he's just saying that it is in  
7 serious doubt. And if we look at the reasons,  
8 they're not surprising. As Special Agent Acee just  
9 testified: A long and troubled criminal background;  
10 that's the SNM. His history of malingering and  
11 otherwise manipulating the penal system for personal  
12 gain; that's the SNM. His receipt of past  
13 consideration and ongoing demands for future  
14 consideration as quid pro quo for cooperation in this  
15 case; that's every defendant who enters a plea  
16 agreement with a 5K or is opened as a federal FBI  
17 source. And the FBI pays people for their time.  
18 They paid Mr. Lujan \$500 for his time. His sustained  
19 use of narcotic drugs; the Court's jury instruction  
20 in the last trial listed almost every single person  
21 who testified from the prison as an abuser of drugs.  
22 And a history of mental health issues; several people  
23 in the prisons have histories of mental health  
24 issues. You heard testimony that every week they  
25 visit people in segregation in the Level 6 to

1 determine how their mental health is doing because  
2 they're in segregation.

3 So none of these things are surprising.  
4 And what we heard from the jury last week --

5 THE COURT: Keep reading.

6 MR. BECK: "He is quite simply unusable as  
7 a witness, because all these concerns would be fodder  
8 for what would inevitably be a long and tortuous  
9 cross-examination that would leave him incredible in  
10 the eyes of a rational fact finder." And I think  
11 that that -- I think that that is contradicted in  
12 this case. If it is a single witness with Mr.  
13 Leonard Lujan, maybe that's the case.

14 THE COURT: I think you've got to sort of  
15 face the reality, that thing is going to be on that  
16 screen.

17 MR. BECK: And that does not concern me in  
18 the least. It doesn't concern me.

19 THE COURT: Well, all I'm trying to tell  
20 you is I'm pausing over whether I can find by a  
21 preponderance of the evidence a conspiracy, and who  
22 is in it, given the only evidence I have at the  
23 present time is Leonard Lujan's evidence --  
24 testimony.

25 MR. BECK: Sure. And I can supplement with

1 his -- and what I was planning to do -- Your Honor  
2 said we should take it at a different time. I asked  
3 at the end of Mr. Lujan's testimony whether I could  
4 supplement with entering into evidence the two  
5 recorded conversation transcripts. Your Honor said:  
6 Wait for a separate time. So I'll enter those in,  
7 and the Court can see that they are coherent, they're  
8 consistent, and that he tells the story that paints  
9 the picture of why the conspiracy exists.

10 THE COURT: Well, I may need something  
11 other than Leonard Lujan, if the U.S. Attorney's  
12 Office is going to write a letter and say a witness  
13 is "simply unusable." Before I make findings of fact  
14 based upon that, I probably need somebody else's  
15 testimony.

16 MR. BECK: And that's fine. But what I'm  
17 saying is I think that the U.S. Attorney's Office  
18 could have written this for any single witness in any  
19 of these trials. Because they all have that same  
20 background. And because -- that's why I would  
21 gather, I think, this has borne that out. This  
22 motion to dismiss has borne that out. I would gather  
23 that's why these cases haven't gone to trial before.  
24 And perhaps -- I think we may elicit this from  
25 Special Agent Acee, but --

1 THE COURT: I guess I think it's of a  
2 different magnitude, when a U.S. Attorney says he is  
3 "quite simply unusable as a witness." That seems to  
4 me to have -- that's just of a different magnitude.

5 MR. BECK: And I don't think so. And I  
6 think we can get that testimony out.

7 THE COURT: All right. Well, we've  
8 identified the problems.

9 All right. Anything else before we finish,  
10 probably, the day with Mr. Acee?

11 MR. CASTLE: No, Your Honor.

12 THE COURT: All right. Mr. Acee, I'll  
13 remind you you're still under oath.

14 Mr. Castle, if you want to finish the day  
15 with Mr. Acee.

16 MR. CASTLE: Yes, Your Honor. I have no  
17 more questions, on the motion to dismiss, of Agent  
18 Acee. But I did talk to the Government -- I have  
19 four exhibits that are related to the motion to --  
20 the statements issue, 1909. I think I finally got  
21 the right number.

22 THE COURT: The motion, the James motion?

23 MR. CASTLE: Yeah, James-related motion.  
24 So I want him to identify the four exhibits, because  
25 a lot of the names are blacked out, so when the Court

1 reads it, you'll know what the exhibits are.

2 THE COURT: All right.

3 BY MR. CASTLE:

4 Q. Agent Acee, I told you I had no more  
5 questions. I was wrong. If you could look at  
6 Exhibit Z. What is that?

7 A. It's a 302 that I wrote.

8 Q. Do you know who it relates to?

9 A. Yes, sir, Julian Romero.

10 Q. It's an interview of Julian Romero?

11 A. It is.

12 Q. Can you look at Exhibit Y?

13 A. A 302 that I wrote. Do you want me to  
14 figure out who I'm talking to?

15 MR. BECK: What's the Bates number on that,  
16 Special Agent Acee?

17 THE WITNESS: It starts at 28271.

18 A. "He pulled the paper from his sock," this  
19 is Timothy Martinez.

20 Q. Can you read the Bates page?

21 A. 42522. Too many redactions here.

22 MR. BECK: Is that Robert Lovato, Special  
23 Agent Acee?

24 THE WITNESS: Yes.

25 BY MR. CASTLE:

1 Q. And Exhibit W, is that Samuel Gonzalez?

2 A. Yes.

3 Q. And I think it's a 302 -- or, I'm sorry, a  
4 report of an interview with Samuel Gonzalez?

5 A. Yes, Bates 24278.

6 MR. CASTLE: Your Honor, I believe the  
7 parties agree that Exhibits W, X, Y, and Z would be  
8 admitted by stipulation.

9 THE COURT: Any objection, Mr. Beck?

10 MR. BECK: No, Your Honor.

11 THE COURT: Any other defendant have any  
12 objection? If not, Defendant's Exhibits W, X, Y, and  
13 Z will be admitted into evidence.

14 MR. CASTLE: No further questions.

15 THE COURT: Anything else, Mr. Castle?

16 MR. CASTLE: No, Your Honor.

17 THE COURT: All right. Mr. Burke, do you  
18 have direct examination of Mr. Acee?

19 MR. BURKE: I do.

20 THE COURT: Mr. Burke.

21 MR. BURKE: Thank you, Your Honor.

22 EXAMINATION

23 BY MR. BURKE:

24 Q. I'd like you to take a look at Exhibit V.

25 I want to go through this with you because you

1 remember that some time ago this was an important  
2 issue, and I just want to be clear on what happened.  
3 We were asking for the old FBI files. And it looks  
4 like -- and I'm focused on the last paragraph. It  
5 looks like you, Agent Stemo, Agent Sainato, Agent  
6 Neale, Task Force Officers Myers and Cupit, and an  
7 FBI staff operations specialist, J. Baca, accompanied  
8 the files to the U.S. Attorney's Office and conducted  
9 a complete review; that's correct, right?

10 A. Yes, sir.

11 Q. So you took them all down there, and  
12 basically your whole team was there?

13 A. Yes, sir.

14 Q. And now, I'm focused primarily on  
15 281D-AQ-62017. And that was Lance Roundy's primary  
16 file?

17 A. It was.

18 Q. And you looked through all of them, and  
19 then you state, "All of the reports pertaining to the  
20 SNM Gang were turned over to Assistant U.S. Attorneys  
21 Matthew Beck and Maria Armijo for review"; correct?

22 A. Yes.

23 Q. And there is no doubt in your mind, is  
24 there, that the letter from Jack Burkhead was perhaps  
25 the last document in the file, wasn't it?

1           A.    Toward the end. I think there may have  
2    been some plea or conviction stuff. But --

3           Q.    So the letter of declination was right  
4    there for anybody to see; correct?

5           A.    Yes, sir.

6           Q.    Makes no sense, does it Agent, that it  
7    would be produced to us yesterday?

8           A.    I'm not aware of a reason.

9           Q.    Thank you.

10                  Now, when did you open your investigation,  
11    which I think is 6395 or something? When did you  
12    open that one?

13           A.    Late March, early April 2015.

14           Q.    Do you think you opened your investigation  
15    before this was declined and closed?

16           A.    Yes.

17           Q.    And I'm guessing, but you tell us, you  
18    hadn't even seen the letter of declination, had you?

19           A.    I had not.

20           Q.    Have you seen language like "he's  
21    incredible" in a letter from a U.S. Attorney before?

22           A.    No, I had not seen.

23           Q.    Yeah. And even with respect to Timothy  
24    "Red" Martinez, or "Playboy" Munoz, did you see U.S.  
25    Attorneys write a letter saying that this witness is



1       incredible, so the jury could be looking at it when  
2       they were testifying?

3             A.     No.

4             MR. BURKE: All right. That's all I have.

5             THE COURT: Thank you, Mr. Burke.

6             Any other defendants have direct  
7       examination of Mr. Acee?

8             All right. Mr. Beck, if you have  
9       cross-examination of Mr. Acee.

10                               CROSS-EXAMINATION

11       BY MR. BECK:

12             Q.     Special Agent Acee, I won't hold the best  
13       for last. We should probably talk about the letter  
14       from Mr. Burkhead first. Why did you -- well, let me  
15       get to this: When you were opening this  
16       investigation, March of 2015, were you working at FBI  
17       in Las Cruces or in Albuquerque?

18             A.     Albuquerque.

19             Q.     Are there AUSAs in Albuquerque?

20             A.     Yes.

21             Q.     Are the majority of AUSAs in New Mexico in  
22       Albuquerque?

23             A.     Yes.

24             Q.     Why didn't you open this case in  
25       Albuquerque?

1 A. No one there wanted it.

2 Q. In your experience, are AUSAs reticent to  
3 take a case that rests primarily on cooperator  
4 testimony?

5 A. No. Almost impossible.

6 Q. So AUSAs don't want to take cases that rest  
7 primarily on cooperator testimony, do they?

8 A. Nor do they want to take cases that have 80  
9 or 90 defendants in them.

10 Q. So why did you come to Ms. Armijo with this  
11 case?

12 A. She's crazy enough to do it. I'd worked  
13 with her in the past, and we'd taken on similar type  
14 challenging projects.

15 Q. In preparing for your testimony today, did  
16 you go back and review SNM FBI sources?

17 A. Yes.

18 Q. And how many FBI sources did you find, who  
19 had been opened previously by the FBI, who would  
20 testify in these cases?

21 A. I'll refer to my notes, if that's all  
22 right.

23 Q. Yes, please.

24 A. Four.

25 Q. And who are those?

1           A.     Excuse me, that's not true. Two. I made  
2     notes on four in reference to a request by defense,  
3     but I only found two.

4           Q.     So you only found two witnesses that had  
5     been previously opened as FBI sources who would  
6     testify in these trials; is that right?

7           A.     Yes, sir.

8           Q.     And who were those?

9           A.     Leonard Lujan and Frederico Munoz.

10          Q.     When was Leonard Lujan first opened as an  
11     FBI source, and by whom?

12          A.     In 2009, by Sonya Chavez.

13          Q.     And when was he closed?

14          A.     2011.

15          Q.     Was he opened again?

16          A.     He was opened again in 2011, six months  
17     later by Agent Roundy.

18          Q.     And was he closed by Agent Roundy?

19          A.     He was closed one year later in September  
20     of 2012.

21          Q.     And then has he been reopened in this case?

22          A.     I told Agent Stemo to open him on January  
23     5, 2017.

24          Q.     And does he remain an open FBI source?

25          A.     Yes.

1 Q. I think you said the next one was Frederico  
2 Munoz?

3 A. Yes.

4 Q. When was he first opened by the FBI, and by  
5 whom?

6 A. He was opened in February of 2009 by Agent  
7 Monarko. You'll recall that was Agent Chavez' new  
8 agent, so really opened by Agent Chavez in 2009.

9 Q. And was he subsequently closed?

10 A. Yes, he was closed December of 2010.

11 Q. And then was he reopened for this case?

12 A. I opened him January of 2016, six years  
13 later.

14 Q. And what is his current status as an FBI  
15 source?

16 A. He's currently open.

17 THE COURT: Mr. Beck, the defense lawyers  
18 have sent me a note saying they need to talk to me  
19 about CJA matters. And so I think I better bring  
20 this to an end.

21 MR. BECK: Sure. May I have one  
22 question -- I may not be done.

23 THE COURT: I know you're not done. I'm  
24 not trying to tell you when to be done, but I do  
25 think to squeeze it in before we leave, I better --

1 MR. BECK: Your Honor, I will not hesitate  
2 to leave you all to do your thing and go home early  
3 to my family.

4 THE COURT: Go ahead.

5 Q. Special Agent Acee, in all of your work in  
6 this case, and everything you've done, going back  
7 historically, into the future, have you ever heard  
8 anyone say, or heard anything related to: That we  
9 should delay prosecution of the 2001 murders or  
10 even -- or any murders for that matter -- delay  
11 prosecution of them for tactical gain?

12 A. No.

13 THE COURT: All right. Thank you, Mr.  
14 Beck.

15 Sorry to interrupt that.

16 MR. BECK: Please don't apologize.

17 THE COURT: One thing, I was going to get  
18 back to you -- do you remember that day -- it may  
19 have been Monday -- about the jury questionnaires.  
20 The defendants got theirs, you didn't.

21 MR. BECK: That has been resolved.

22 THE COURT: I know it has, and it's  
23 inexplicable what happened. I do understand it's  
24 been resolved. But I wanted to tell you, as far as I  
25 can figure out, it wasn't intentional. I don't have

1 an explanation for that.

2 MR. BECK: Sure.

3 Your Honor, before I leave, I know I  
4 said -- you said you'd cut me off there, and that's  
5 fine -- I was just going to seek to admit related to  
6 the 1909 motion -- well, and maybe the James  
7 motion -- Mr. Lujan's transcripts from August 8, 2007  
8 and September 12, 2007, as Government's Exhibit 1.  
9 And then I think we're on 10.

10 THE COURT: Well, if you're doing it for  
11 the James hearing, it's going to be different  
12 numbers. Well, it may not be, because Mr. Castellano  
13 started --

14 MR. BECK: Oh, I can do it for the James  
15 hearing, and then we can cross-reference.

16 THE COURT: What are you primarily doing it  
17 for? This --

18 MR. BECK: I guess now I'm primarily doing  
19 it for the James hearing. I guess that makes sense.  
20 So I think for the James hearing we're probably on  
21 12, if memory serves; is that correct?

22 THE CLERK: 12 is right here --

23 THE COURT: What Mr. Castellano did was  
24 Government's Exhibit 11 through 18 were the plea  
25 agreements.

1 MR. BECK: All right, 11 through 18. So  
2 why don't I do -- should I do 19 and 20? Does that  
3 sound good?

4 THE COURT: All right.

5 MR. BECK: So as 19 I will mark the August  
6 8, 2007. And for 20, I will do the September 12,  
7 2007.

8 THE COURT: Any objections to these?

9 MR. BURKE: No objection, Your Honor.

10 THE COURT: All right. Mr. Castle, do you  
11 have any objections?

12 MR. CASTLE: No objection.

13 THE COURT: Anybody else?

14 All right. So Government's Exhibits 19 and  
15 20 will be admitted for purposes of only the James  
16 hearing?

17 MR. BECK: The James hearing, and then  
18 they'll go to -- yeah, it's fine. They will be for  
19 1909. But really they're just going to the James  
20 hearing. And the Court will have some familiarity  
21 with them when it looks at 1909. So just for the  
22 James hearing is fine.

23 MR. BURKE: Your Honor, I think Defendant's  
24 Exhibit V was admitted. But if it wasn't, I'll move  
25 the admission of V for the motion.

1 MS. GILBERT: It was.

2 THE COURT: Are we pretty sure V is in?

3 MR. BECK: Yes.

4 THE COURT: All right. So we'll conclude  
5 the hearing. Let me thank everybody for their hard  
6 work. If I don't see you again, be here at 8:30 on  
7 Monday, April 9. And I just can't promise anything  
8 going out of here. But be in communication with Ms.  
9 Bevel or Ms. Wild, and we'll see where we are. But I  
10 appreciate your hard work. Be safe.

11 I'll let the Government clear out of the  
12 room. We'll close this hearing down, and we'll then  
13 have a CJA hearing before we leave.

14 MR. BECK: I think, in the interests of  
15 time, we might just leave a little stuff here and  
16 come and get it next week.

17 THE COURT: All right. The CJA hearing  
18 will be on the record.

19 (An ex parte CJA hearing was held,  
20 transcript not included.)

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
1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3  
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,  
6 Official Court Reporter for the State of New Mexico,  
7 do hereby certify that the foregoing pages constitute  
8 a true transcript of proceedings had before the said  
9 Court, held in the District of New Mexico, in the  
10 matter therein stated.

11 In testimony whereof, I have hereunto set my  
12 hand on this 23rd day of March, 2018.

13  
14   
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